

000115		REQUEST FOR COUNCIL ACTION CITY OF SAN DIEGO		1. CERTIFICATE NUMP (FOR AUDITOR'S USE) <div style="text-align: right;">51</div>			
TO: CITY ATTORNEY		2. FROM (ORIGINATING DEPARTMENT): DEVELOPMENT SERVICES		3. DATE: 01/27 October 2, 2008			
4. SUBJECT: Casa Mira View, Project No. 91647							
5. PRIMARY CONTACT (NAME, PHONE, & MAIL STA.) John S. Fisher (619) 446-5231, MS-301		6. SECONDARY CONTACT (NAME, PHONE, & MAIL STA.) Mike Westlake (619) 446-5220, MS-501		7. CHECK BOX IF REPORT TO COUNCIL IS ATTACHED <input type="checkbox"/>			
8. COMPLETE FOR ACCOUNTING PURPOSES							
FUND				9. ADDITIONAL INFORMATION / ESTIMATED COST: No cost to the City. All costs are recovered through a deposit account funded by the applicant.			
DEPT.	1317						
ORGANIZATION	1672						
OBJECT ACCOUNT	4038						
JOB ORDER	425739						
C.I.P. NUMBER							
AMOUNT							
10. ROUTING AND APPROVALS							
ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED	ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
1	ORIG. DEPT	KELLY BROUGHTON	10/6/08	8	DEPUTY CHIEF	WILLIAM ANDERSON	10/7/08
2	EAS	MARTHA BLAKE	10/6/08	9			
3	ECOP EXEMPT PER MEMO DATED 5/9/06			10	CITY ATTORNEY	J. R. Edwards	10-10-08
4				11	ORIG. DEPT	MIKE WESTLAKE	10/2/08
5				DOCKET COORD: _____ COUNCIL LIAISON: _____ <input checked="" type="checkbox"/> COUNCIL PRESIDENT <input type="checkbox"/> SPOB <input type="checkbox"/> CONSENT <input type="checkbox"/> ADOPTION <input type="checkbox"/> REFER TO: _____ COUNCIL DATE: _____			
6							
7							
11. PREPARATION OF: <input checked="" type="checkbox"/> RESOLUTIONS <input checked="" type="checkbox"/> ORDINANCE(S) <input type="checkbox"/> AGREEMENT(S) <input type="checkbox"/> DEED(S)							
1) Council resolution certifying that the information contained in Project No. 91647 has been completed in compliance with the California Environmental Quality Act and State CEQA Guidelines, and that said Environmental Impact Report No. 91647 reflects the independent judgement of the City of San Diego as Lead Agency, stating for the record that the final Environmental Impact Report has been reviewed and considered prior to approving the project, certifying the final Environmental Impact Report, adopting the Findings and Statement of Overriding Considerations, and adopting the Mitigation, Monitoring, and Reporting Program. 2) Council ordinance rezoning 56.30 acres in Mira Mesa from RM-3-7 Zone to RM-3-8 Zone. 3) Council resolutions approving the Vesting Tentative Map No. 481936 and Easement Vacation No. 368513. 4) Council resolutions approving the Planned Development Permit No. 294375 and Site Development Permit No. 294373.							
11A. STAFF RECOMMENDATIONS: Adopt the Ordinance and Approve the Resolutions.							

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12. SPECIAL CONDITIONS (REFER TO A.R. 3.20 FOR INFORMATION ON COMPLETING THIS SECTION.)

COUNCIL DISTRICT(S): 5

COMMUNITY AREA(S): Mira Mesa

ENVIRONMENTAL IMPACT: The City of San Diego as Lead Agency under CEQA has prepared and completed a Environmental Impact Report, Project No. 91647, dated August 28, 2008 and Mitigation, Monitoring, and Reporting Program covering this activity.

CITY CLERK INSTRUCTIONS:

1. Public noticing is required.
2. Return copies of the ordinance, each resolution and permit to John S. Fisher, MS-301.
3. Council action requires a majority vote.
4. The Easement Vacation is being processed in accordance with Streets & Highways Code Sec. 8300, Vesting Tentative Map in accordance with SDMC 125.0450, the PDP in accordance with SDMC 126.0601, and the SDP in accordance with 126.0501.

RECEIVED
CITY CLERK'S OFFICE

08 OCT 13 PM 12:00

SAN DIEGO, CALIF.

CITY ATTORNEY
08 OCT -7 PM 12:26
CIVIL DIVISION

ORDINANCE NUMBER _____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO CHANGING 56.30 ACRES LOCATED ON THE EAST SIDE OF WESTVIEW PARKWAY, NORTH OF MIRA MESA BOULEVARD, WITHIN THE MIRA MESA COMMUNITY PLAN AREA, IN THE CITY OF SAN DIEGO, CALIFORNIA, FROM THE RM-3-7 ZONE INTO THE RM-3-8 ZONE, AS DEFINED BY SAN DIEGO MUNICIPAL CODE SECTION 131.0400, AND REPEALING ORDINANCE NO.O-18451 (NEW SERIES), ADOPTED DECEMBER 9, 1997, OF ORDINANCES OF THE CITY OF SAN DIEGO INsofar AS THE SAME CONFLICTS HERewith.

WHEREAS, under Charter Section 280(a)(2), this Ordinance is not subject to veto by the Mayor because this matter requires the City Council to act as a quasi-judicial body, a public hearing was required by law implicating due process rights of individuals affected by the decision, and the Council was required by law to consider evidence at the hearing and to make legal findings based on the evidence presented; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That 56.30 acres located on the east side of Westview Parkway, north of Mira Mesa Boulevard, and legally described as Parcels 1 through 6, inclusive, of Parcel Map No. 16194, filed August 21, 1990, in the Office of the County Recorder in the Mira Mesa Community Plan area, in the City of San Diego, California, as shown on Zone Map Drawing No. B-4269, filed in the office of the City Clerk as Document No. OO-_____, are rezoned from the Residential Base zones into the Residential Base zones, as the RM-3-8 zone is described and defined by San Diego Municipal Code Chapter 13 Article 1 Division 4. This action amends the Official Zoning Map adopted by Resolution R-301263 on February 28, 2006.

Section 2. That Ordinance No. O-18451 (New Series), adopted December 9, 1997, of the ordinances of the City of San Diego is repealed insofar as the same conflicts with the rezoned uses of the land.

Section 3. That a full reading of this ordinance is dispensed with prior to its final passage, a written or printed copy having been available to the City Council and the public a day prior to its final passage.

Section 4. That this ordinance shall take effect and be in force on the thirtieth day from and after its passage, and no building permits for development inconsistent with the provisions of this ordinance shall be issued unless application therefore was made prior to the date of adoption of this ordinance.

APPROVED: JAN I. GOLDSMITH, City Attorney

By Shannon Thomas
Shannon Thomas
Deputy City Attorney

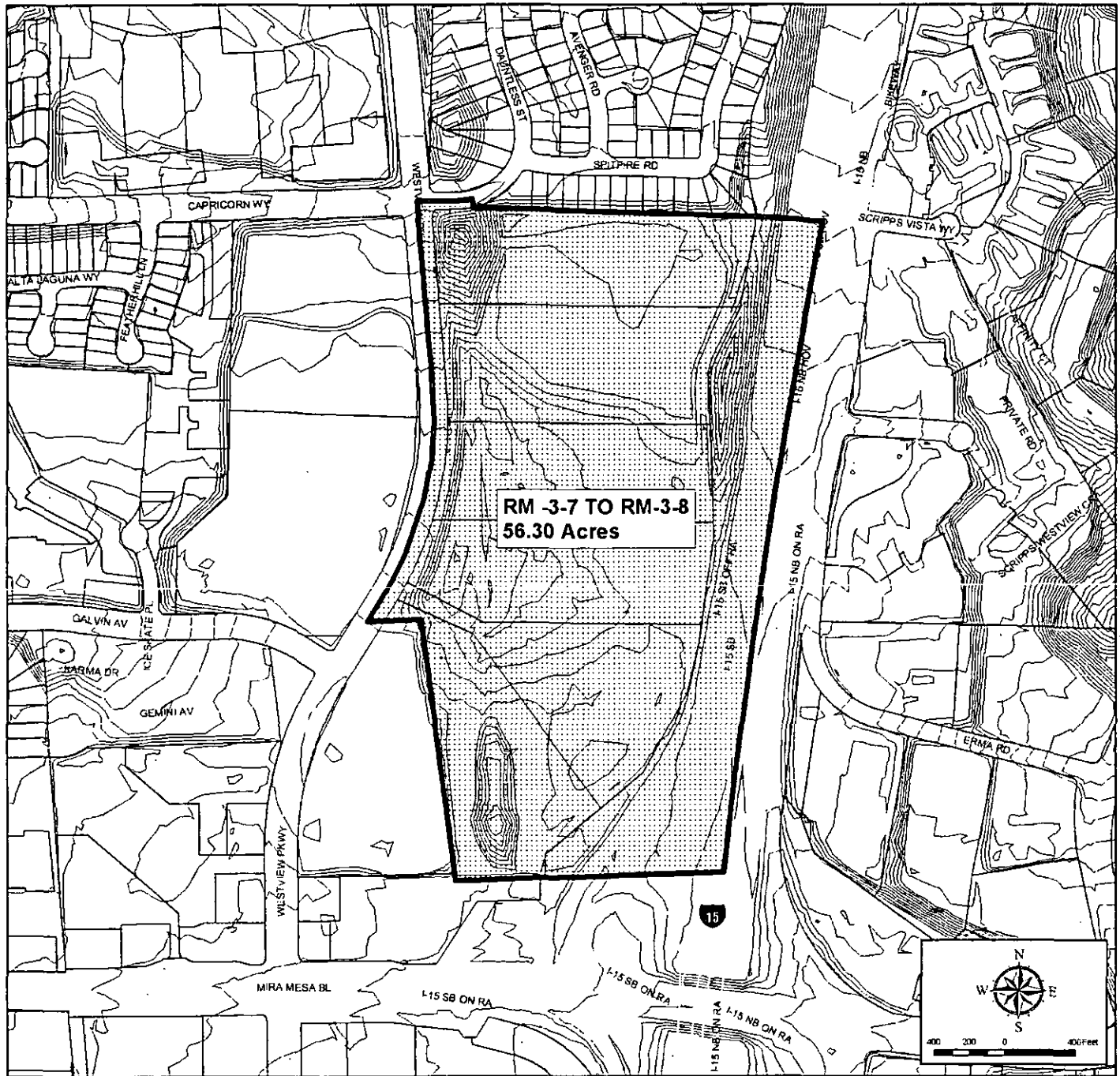
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10/09/08
01/12/09 COR.COPY
Or.Dept:DSD
O-2009-52
MMS: #6880

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CITY OF SAN DIEGO • DEVELOPMENT SERVICES

PROPOSED REZONING



PAR 1,2,3,4,5, & 6 PM 16194

ORDINANCE NO. _____
 EFF. DATE ORD. _____
 ZONING SUBJ. TO _____
 BEFORE DATE _____
 EFF. DATE ZONING _____
 MAP NAME AND NO. _____

REQUEST RM-3-8
 PLANNING COMM.
 RECOMMENDATION
 CITY COUNCIL
 ACTION

CASE NO. PTS 91647

DEVELOPMENT SERVICES MANAGER

B- 4269

APN: 318-410-20 to 25

(274-1725) 08-13-08 ldj

DOCUMENT NO. _____

FILED _____

OFFICE OF THE CITY CLERK
 SAN DIEGO, CALIFORNIA

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RESOLUTION NUMBER R- 304581

DATE OF FINAL PASSAGE JAN 06 2009

ENVIRONMENTAL IMPACT REPORT NO. 91647 - CASA
MIRA VIEW PROJECT.

WHEREAS, on June 14, 2006, Scripps Mesa Developers, LLC, a Limited Liability Company, submitted an application to the City of San Diego for a rezone, easement vacation, vesting tentative map and planned development permit/site development permit, for the Casa Mira View Project; and

WHEREAS, the matter was set for a public hearing to be conducted by the Council of the City of San Diego; and

WHEREAS, under Charter Section 280(a)(2), this Resolution is not subject to veto by the Mayor because this matter requires the City Council to act as a quasi-judicial body, a public hearing was required by law implicating due process rights of individuals affected by the decision, and the Council was required by law to consider evidence at the hearing and to make legal findings based on the evidence presented; and

WHEREAS, the issue was heard by the City Council on JAN 06 2009; and

WHEREAS, the City Council considered the issues discussed in Environmental Impact Report [EIR] No.91647/SCH No 2007111095; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that it is certified that EIR No. 91647/SCH No. 2007111095, on file in the office of the City Clerk, has been completed in compliance with the California Environmental Quality Act of 1970 (California Public Resources Code section 21000 et seq.), as amended, and the State guidelines thereto (California

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Code of Regulations section 15000 et seq.), that the report reflects the independent judgment of the City of San Diego as Lead Agency and that the information contained in said report, together with any comments received during the public review process, has been reviewed and considered by this Council in connection with the approval of a rezone, easement vacation, vesting tentative map, and planned development permit/site development permit for the Casa Mira View Project.

BE IT FURTHER RESOLVED, that pursuant to California Public Resources Code section 21081 and California Code of Regulations section 15091, the City Council adopts the findings made with respect to the project, a copy of which is on file in the office of the City Clerk and incorporated herein by reference.

BE IT FURTHER RESOLVED, that pursuant to California Code of Regulations section 15093, the City Council adopts the Statement of Overriding Considerations, a copy of which is on file in the office of the City Clerk and incorporated herein by reference, with respect to the project.

BE IT FURTHER RESOLVED, that pursuant to California Public Resources Code section 21081.6, the City Council adopts the Mitigation Monitoring and Reporting Program, or alterations to implement the changes to the project as required by this body in order to mitigate or avoid significant effects on the environment, a copy of which is attached hereto, as Exhibit A, and incorporated herein by reference.

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BE IT FURTHER RESOLVED, that the City Clerk is directed to file a Notice of
Determination [NOD] with the Clerk of the Board of Supervisors for the County of San Diego
regarding the above project.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

//Submitted without signature//

By

Shirley R. Edwards
Chief Deputy City Attorney

SRE:cw:pev
10/09/08
Or.Dept:DSD
R-2009-445
MMS: #6880

EXHIBIT A
MITIGATION MONITORING AND REPORTING PROGRAM
CASA MIRA VIEW PROJECT
Rezone, Easement Vacation, Vesting Tentative Map, Planned Development Permit
and Site Development Permit
Project No. 91647

This Mitigation Monitoring and Reporting Program is designed to ensure compliance with Public Resources Code Section 21081.6 during implementation of mitigation measures. This program identifies at a minimum: the department responsible for the monitoring, what is to be monitored, how the monitoring shall be accomplished, the monitoring and reporting schedule, and completion requirements. A record of the Mitigation Monitoring and Reporting Program will be maintained at the offices of the Entitlements Division, 1222 First Avenue, Fifth Floor, San Diego, CA 92101. All mitigation measures contained in the Environmental Impact Report (Project No. 91647/SCH No 2007111095) shall be made conditions of the Rezone No. 481935, Easement Vacation No. 368513, Vesting Tentative Map No. 481936, Planned Development Permit No. 294375 and Site Development Permit No. 294373 as may be further described below.

As Lead Agency for the proposed project under CEQA, the City of San Diego will administer the MMRP for the following environmental issue areas as identified in the Casa Mira View EIR: Land Use/Multiple Species Conservation Program; Traffic/Circulation; Air Quality; Public Facilities and Services; Noise; Paleontological Resources and Biological Resources. The mitigation measures identified below include all applicable measures from the Casa Mira View EIR (Project No. 91647/ SCH No. 2007111095). This MMRP shall be made a requirement of project approval.

Section 21081.6 to the State of California Public Resources Code requires a lead or responsible agency that approves or carries out a project where an environmental impact report (EIR) has identified significant environmental effects to adopt a "reporting or monitoring program for adopted or required changes to mitigate or avoid significant environmental effects." The City of San Diego is the Lead Agency for the Casa Mira View EIR, and therefore must ensure the enforceability of the Mitigation Monitoring and Reporting Program (MMRP). An EIR, has been prepared for this project which addresses potential environmental impacts and, where appropriate, recommends measures to mitigate these impacts. As such, an MMRP is required to ensure that adopted mitigation measures are implemented.

10.1 GENERAL

Prior to issuance of a Notice to Proceed (NTC), the Assistant Deputy Director (ADD) Environmental Designee of the Entitlements Division shall verify that the following Mitigation Measures have been included in entirety on the submitted construction documents and contract specifications, and included under the heading, "Environmental Mitigation Requirements." In addition, the requirements for a Preconstruction Meeting shall be noted on all construction documents.

Prior to the commencement of work, a Preconstruction Meeting (Pre-con) shall be conducted and include the City of San Diego's Mitigation Monitoring Coordination (MMC) Section, Resident Engineer, Building Inspector, Project Biologist/Archaeologist/Paleontologist, Applicant and other parties of interest.

Evidence of compliance with other permitting authorities is required, if applicable. Evidence shall include either copies of permits issued, letters of resolution issued by the Responsible Agency documenting compliance, or other evidence documenting compliance and deemed acceptable by the ADD Environmental Designee.

10.2 LAND USE

The project shall incorporate or comply with the measures provided below to the satisfaction of the City Development Services Department during construction. The City Development Services Department shall verify that future development plans have incorporated or complied with the following measures:

- LU-1** Prior to the issuance of any grading permits and/or the first pre-construction meeting, the owner/permittee shall submit evidence to the ADD of the Entitlements Division verifying that a qualified biologist has been retained to implement the biological resources mitigation program as detailed below:
- A. Prior to the first pre-construction meeting, the applicant shall provide a letter of verification to the ADD of the Entitlements Division stating that a qualified Biologist, as defined in the City of San Diego Biological Resource Guidelines (BRG), has been retained to implement the revegetation plan.
 - B. At least thirty days prior to the pre-construction meeting, a second letter shall be submitted to the MMC section, which includes the name and contact information of the Biologist and the names of all persons involved in the Biological Monitoring of the project.
 - C. At least thirty days prior to the pre-construction meeting, the qualified Biologist shall verify that any special reports, maps, plans and time lines, such as but not limited to, revegetation plans, plant relocation requirements and timing, avian or other wildlife protocol surveys, impact avoidance areas or other such information has been completed and updated.
 - D. The qualified biologist (project biologist) shall attend the first preconstruction meeting.
- LU-2** In addition the following mitigation measures related to the MHPA Land Use Adjacency Guidelines shall be implemented:
- A. Prior to initiation of any construction-related grading, the construction foreman shall discuss the sensitive nature of the adjacent habitat with the crew and subcontractor.

- B. The limits of grading shall be clearly delineated by a survey crew prior to brushing, clearing or grading. The project biologist shall supervise the placement of orange construction fencing or equivalent along the limits of disturbance within and surrounding sensitive habitats as shown on the approved Exhibit A. The limits of grading shall be defined with silt fencing or orange construction fencing and checked by the biological monitor before initiation of construction grading.
- C. No invasive non-native plant species shall be introduced into areas adjacent to the MHPA. Landscape plans shall not contain invasive, non-native species.
- D. All lighting adjacent to the MHPA shall be shielded, unidirectional, low pressure sodium illumination (or similar) and directed away from preserve areas using appropriate placement and shields.
- E. All construction activities (including staging areas and/or storage areas) shall be restricted to the development area as shown on the approved Exhibit A. No equipment maintenance shall be conducted within or near the adjacent open space and/or sensitive areas and shall be restricted to the development area as shown on the approved Exhibit A. The project biologist shall monitor construction activities as needed to ensure that construction activities do not encroach into biologically sensitive areas beyond the limits of disturbance as shown on the approved Exhibit A.
- F. Natural drainage patterns shall be maintained as much as possible during construction. Erosion control techniques, including the use of sandbags, hay bales, and/or the installation of sediment traps, shall be used to control erosion and deter drainage during construction activities into the adjacent open space. Drainage from all development areas adjacent to the MHPA shall be directed away from the MHPA, or if not possible, must not drain directly into the MHPA, but instead into sedimentation basins, grassy swales, and/or mechanical trapping devices as specified by the City Engineer.
- G. No trash, oil, parking or other construction related activities shall be allowed outside the established limits of grading. All construction related debris shall be removed off-site to an approved disposal facility.

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Should construction occur during the breeding season of the coastal California gnatcatcher (March 1 through August 15), and least Bell's vireo (March 15 and September 15), the following mitigation measures shall be required and implemented:

- A. COASTAL CALIFORNIA GNATCATCHER (Federally Threatened)- Prior to the issuance of any grading permit the City Manager (or appointed designee) shall verify that the Multi-Habitat Planning Area

(MHPA) boundaries and the following project requirements regarding the coastal California gnatcatcher are shown on the construction plans:

No clearing, grubbing, grading, or other construction activities shall occur between March 1 and August 15, the breeding season of the coastal California gnatcatcher, until the following requirements have been met to the satisfaction of the City Manager:

1. A Qualified Biologist (possessing a valid Endangered Species Act Section 10(a)(1)(a) Recovery Permit) shall survey those habitat areas within the MHPA that would be subject to construction noise levels exceeding 60 decibels [db(a)] hourly average for the presence of the coastal California gnatcatcher. Surveys for the coastal California gnatcatcher shall be conducted pursuant to the protocol survey guidelines established by the U.S. Fish and Wildlife Service within the breeding season prior to the commencement of any construction. If coastal California gnatcatchers are present, then the following conditions must be met:
 - a. Between March 1 and August 15, no clearing, grubbing, or grading of occupied coastal California gnatcatcher habitat shall be permitted. Areas restricted from such activities shall be staked or fenced under the supervision of a Qualified Biologist; and
 - b. Between March 1 and August 15, no construction activities shall occur within any portion of the site where construction activities would result in noise levels exceeding 60 dB(A) hourly average at the edge of occupied coastal California gnatcatcher habitat. An analysis showing that noise generated by construction activities would not exceed 60 dB(A) hourly average at the edge of occupied habitat must be completed by a Qualified Acoustician (possessing current noise engineer license or registration with monitoring noise level experience with listed animal species) and approved by the City Manager at least two weeks prior to the commencement of construction activities. Prior to the commencement of construction activities during the breeding season, areas restricted from such activities shall be staked or fenced under the supervision of a Qualified Biologist; or
 - c. At least two weeks prior to the commencement of construction activities, under the direction of a Qualified Acoustician, noise attenuation measures (e.g., berms, walls) shall be implemented to ensure that noise levels resulting from construction activities will not exceed 60

dB(A) hourly average at the edge of habitat occupied by the coastal California gnatcatcher. Concurrent with the commencement of construction activities and the construction of necessary noise attenuation facilities, noise monitoring* shall be conducted at the edge of the occupied habitat area to ensure that noise levels do not exceed 60 dB(A) hourly average. If the noise attenuation techniques implemented are determined to be inadequate by the Qualified Acoustician or Biologist, then the associated construction activities shall cease until such time that adequate noise attenuation is achieved or until the end of the breeding season (August 16).

*Construction noise monitoring shall continue to be monitored at least twice weekly on varying days, or more frequently depending on the construction activity, to verify that noise levels at the edge of occupied habitat are maintained below 60 dB(A) hourly average or to the ambient noise level if it already exceeds 60 dB(A) hourly average. If not, other measures shall be implemented in consultation with the biologist and the City Manager, as necessary, to reduce noise levels to below 60 dB(A) hourly average or to the ambient noise level if it already exceeds 60 dB(A) hourly average. Such measures may include, but are not limited to, limitations on the placement of construction equipment and the simultaneous use of equipment.

2. If coastal California gnatcatchers are not detected during the protocol survey, the qualified biologist shall submit substantial evidence to the city manager and applicable resource agencies which demonstrates whether or not mitigation measures such as noise walls are necessary between March 1 and August 15 as follows:
 - a. If this evidence indicates the potential is high for coastal California gnatcatcher to be present based on historical records or site conditions, then condition A.III shall be adhered to as specified above.
 - b. If this evidence concludes that no impacts to this species are anticipated, no mitigation measures would be necessary.

- B. LEAST BELL'S VIREO (State Endangered/Federally Endangered) - Prior to the issuance of any grading permit, the City Manager (or appointed designee) shall verify that the following project requirements regarding the least Bell's vireo are shown on the construction plans:

No clearing, grubbing, grading, or other construction activities shall occur between March 15 and September 15, the breeding season of the least Bell's vireo, until the following requirements have been met to the satisfaction of the City Manager:

1. A Qualified Biologist (possessing a valid Endangered Species Act Section subject to construction noise levels exceeding 60 decibels [db(a)] hourly average for the presence of the least Bell's vireo. Surveys for the least Bell's vireo shall be conducted pursuant to the protocol survey guidelines established by the U.S. Fish and Wildlife Service within the breeding season prior to the commencement of any construction. If the least Bell's vireo are present, then the following conditions must be met:
 - a. Between March 15 and September 15, no clearing, grubbing, or grading of occupied least Bell's vireo habitat shall be permitted. Areas restricted from such activities shall be staked or fenced under the supervision of a Qualified Biologist; and
 - b. Between March 15 and September 15, no construction activities shall occur within any portion of the site where construction activities would result in noise levels exceeding 60 dB(A) hourly average at the edge of occupied least Bell's vireo habitat. An analysis showing that noise generated by construction activities would not exceed 60 dB(A) hourly average at the edge of occupied habitat must be completed by a Qualified Acoustician (possessing current noise engineer license or registration with monitoring noise level experience with listed animal species) and approved by the City Manager at least two weeks prior to the commencement of construction activities. Prior to the commencement of construction activities during the breeding season, areas restricted from such activities shall be staked or fenced under the supervision of a Qualified Biologist; or
 - c. At least two weeks prior to the commencement of construction activities, under the direction of a Qualified Acoustician, noise attenuation measures (e.g., berms, walls) shall be implemented to ensure that noise levels resulting from construction activities will not exceed 60 dB(A) hourly average at the edge of habitat occupied by the least Bell's vireo. Concurrent with the commencement of construction activities and the construction of necessary noise attenuation facilities, noise monitoring* shall be conducted at the edge of the

occupied habitat area to ensure that noise levels do not exceed 60 dB(A) hourly average. If the noise attenuation techniques implemented are determined to be inadequate by the Qualified Acoustician or Biologist, then the associated construction activities shall cease until such time that adequate noise attenuation is achieved or until the end of the breeding season (September 15).

* Construction noise monitoring shall continue to be monitored at least twice weekly on varying days, or more frequently depending on the construction activity, to verify that noise levels at the edge of occupied habitat are maintained below 60 dB(A) hourly average or to the ambient noise level if it already exceeds 60 dB(A) hourly average. If not, other measures shall be implemented in consultation with the biologist and the City Manager, as necessary, to reduce noise levels to below 60 dB(A) hourly average or to the ambient noise level if it already exceeds 60 dB(A) hourly average. Such measures may include, but are not limited to, limitations on the placement of construction equipment and the simultaneous use of equipment.

2. If least Bell's vireo are not detected during the protocol survey, the Qualified Biologist shall submit substantial evidence to the City Manager and applicable resource agencies which demonstrates whether or not mitigation measures such as noise walls are necessary between March 15 and September 15 as follows:
 - a. If this evidence indicates the potential is high for least Bell's vireo to be present based on historical records or site conditions, then condition A.III shall be adhered to as specified above.
 - b. If this evidence concludes that no impacts to this species are anticipated, no mitigation measures would be necessary.

10.3 TRAFFIC AND CIRCULATION

The Casa Mira View project shall provide improvements to intersections and street segments to mitigate direct or cumulative impacts to these locations. *Figure 4.2-8* shows the locations and description of the improvements to be provided by the project. The mitigation measures required by the project are discussed below.

- TRAF-1** Prior to the issuance of a building permit for the first residential dwelling unit, the applicant shall assure, to the satisfaction of the City Engineer, construction of a northbound right-turn lane at the intersection of Mira Mesa Boulevard and Black Mountain Road. This mitigation would reduce impacts, to the

intersection Mira Mesa Boulevard and Black Mountain Road, to below a level of significance and would partially mitigate the project's significant impacts to the Mira Mesa Boulevard street segment from Westview Parkway to Black Mountain Road.

For the direct and cumulatively significant impacts along the Mira Mesa Boulevard street segment, between Westview Parkway and Black Mountain Road, unmitigable impacts would result. To fully mitigate for the project's impact, the existing road would require widening to 8 lanes from its current configuration of 7 lanes. Further widening of this segment of Mira Mesa Boulevard would require eminent domain by the City to remove existing structures along this street segment, including private commercial businesses. As such it is considered infeasible and would remain unmitigated. Implementation of mitigation measures TRAF-1 would improve the traffic conditions for street segments on Mira Mesa Boulevard; however, not to a level below significance.

TRAF-2 Prior to the issuance of a building permit for the second building (811th residential dwelling unit), the applicant shall assure, to the satisfaction of the City Engineer, construction of a third northbound and a third southbound thru lanes and transitions on Black Mountain Road from Mercy Road transitioning to four lanes prior to the Penasquitos Canyon Creek Bridge. This mitigation would fully mitigate the project's impacts to the intersection of Mercy Road and Black Mountain Road and partially mitigate the project's significant impacts to the Black Mountain Road (Mercy Road to Park Village Drive) street segment.

To fully mitigate for the project's significant impact along this roadway segment, a full 6-lane widening of the entire segment from Mercy Road to Park Village Drive would be required. However, because full widening would require bridge widening, elimination of the existing planted median, and relocation of a major water line, the full widening is not feasible. Therefore, the applicant shall provide feasible mitigation, that is, 6-lane widening of Black Mountain Road, for approximately 960 feet north of Mercy Road, until the existing Black Mountain Road bridge.

Approximately 290 feet of Black Mountain Road from the Penasquitos Canyon Creek Bridge to Park Village Drive would not be widened to 6-lanes and would remain unmitigated.

TRAF-3 Prior to the issuance of a building permit for the first residential dwelling unit, the applicant shall assure, to the satisfaction of the City Engineer, construction of a northbound right-turn lane at the intersection of Black Mountain Road and Hillery Drive. This mitigation would reduce impacts, to the Black Mountain Road and Hillery Drive intersection, to below a level of significance.

TRAF-4 Prior to the issuance of a building permit for the first residential dwelling unit, the applicant shall assure, to the satisfaction of the City Engineer, widening of eastbound and westbound approaches and assure an additional westbound right-turn lane at the intersection of Black Mountain Road and Gold Coast

Drive. This mitigation would reduce impacts, to the intersection of Gold Coast Drive and Black Mountain Road, to below a level of significance.

TRAF-5 Prior to the issuance of a building permit for the first residential dwelling unit, the project applicant shall either provide a fair-share contribution of \$1,572,000 towards the construction of the I-15 'managed lanes south segment' project or provide a fair share contribution distributed by building and totaling \$1,572,000 (in 2008 dollars) in the following manner: Prior to the issuance of a building permit for the first residential building permit, the applicant shall provide a fair-share contribution of \$700,000 (in 2008 dollars). Prior to the issuance of a building permit for the second building (811th residential unit), the applicant shall provide a fair-share contribution of \$700,000 (in 2008 dollars). Prior to the issuance of a building permit for the third building (1,621st residential unit), the applicant shall provide a fair-share contribution of \$172,000 (in 2008 dollars) towards the construction of the I-15 'managed lanes south segment' project. This contribution is to be paid subject to the satisfaction of the City Engineer. The fair-share contribution would partially mitigate the Mira Mesa Boulevard/ I-15 SB ramp cumulative impact and the Mira Mesa Boulevard street segment from I-15 onramps to Westview Parkway; however, there is no certain method of determining whether or not the fair-share contribution to Caltrans would actually fully mitigate the project's cumulative contribution to significant impacts at this intersection, and if construction of the managed lanes south segment project is not completed by Caltrans, impacts would remain unmitigated.

TRAF-6 Prior to the issuance of a building permit for the first residential dwelling unit, the applicant shall assure, to the satisfaction of the City Engineer, an extension of the westbound dual-left turn lanes on Mira Mesa Boulevard as well as provide striping, signing, and modifications to increase the storage for the southbound left turn lanes on Westview Parkway in order to increase the capacity of this intersection and increase the capacity of street segments on Mira Mesa Boulevard. This mitigation measure would partially reduce impacts to the Mira Mesa Boulevard street segment from the I-15 on-ramps to Westview Parkway.

10.4 AIR QUALITY

The project shall incorporate or comply with the measures provided below to the satisfaction of the City Development Services Department during construction. The City Development Services Department shall verify that future development plans have incorporated or complied with the following measures:

AQ-1 During the construction phase, contractors shall maintain equipment and vehicle engines in good condition and in proper tune per manufacturers' specifications. Construction equipment utilized for grading and excavation shall be equipped with a diesel oxidation catalyst of reducing NO_x emissions by 40 percent. As feasible, contractors shall utilize electricity from power poles rather than temporary diesel or gasoline generators. Heavy-duty

haul/delivery trucks shall be prohibited from idling in excess of five minutes, both on and off site, to be consistent with State law.

- AQ-2** Construction activity that affects traffic flow on the arterial system shall be limited to off-peak hours, as feasible. In addition, construction parking shall be configured to minimize traffic interference.

No feasible mitigation measures are available to reduce long-term operational PM₁₀, CO, and VOC emissions to less than significant levels. The majority of the operational air quality impacts are a result of the estimated 11,088 average daily trips generated by the project (USA 2008a). While the project has included shuttle services, which would serve to reduce operational emissions, the amount of reduction is difficult to quantify. Also, it is not feasible for the applicant to require emission control devices be implemented on private vehicles associated with the project. There are no other feasible mitigation measures to reduce mobile source emissions to less than significant levels. Therefore, the project would result in a significant and unavoidable regional operations impact from PM₁₀, CO, and VOC emissions.

10.5 PUBLIC FACILITIES AND SERVICES

The project shall incorporate or comply with the measures provided below to the satisfaction of the City Development Services Department. The City Development Services Department shall verify that future project plans have incorporated or complied with the following measures:

Entitlements Plan Check

- PFS-1** Prior to the issuance of any construction permit, including but is not limited to, demolition, grading, building or any other construction permit, the Assistant Deputy Director (ADD) Environmental Designee shall verify that the all the requirements of the Refuse & Recyclable Materials Storage Regulations and all of the requirements of the waste management plan are shown and noted on the appropriate construction documents. All requirements, notes and graphics shall be in substantial conformance with the conditions and exhibits of the associated discretionary approval.
- PFS-2** The construction documents shall include a waste management plan that addresses the following information and elements for demolition, construction, and occupancy phases of the project as applicable:
- (a) tons of waste anticipated to be generated
 - (b) material type of waste to be generated
 - (c) source separation techniques for waste generated
 - (d) how materials will be reused on site
 - (e) name and location of recycling, reuse, or landfill facilities where waste will be taken if not reused on site

- (f) a "buy recycled" program
- (g) how the project will aim to reduce the generation of construction/ demolition debris
- (h) a plan of how waste reduction and recycling goals will be communicated to subcontractors
- (i) a time line for each of the three main phases of the project as stated above
- (j) a list of required progress and final inspections by City staff.

PFS-3 The plan shall strive for a goal of 50% waste reduction.

PFS-4 The plan shall include specific performance measures to be assessed upon the completion of the project to measure success in achieving waste minimization goals.

PFS-5 The Plan shall include notes requiring the Permittee to notify MMC and ESD when:

- (a) a demolition permit is issued
- (b) demolition begins on site
- (c) inspections are needed. The permittee shall arrange for progress inspections, and a final inspection, as specified in the plan and shall contact both MMC and ESD to perform these periodic site visits during demolition and construction to inspect the progress of the project's waste diversion efforts.

When Demolition ends, notification shall be sent to:

Mitigation Monitoring Coordination (MMC) Environmental Review Specialist
9601 Ridgehaven Court, Ste. 320, MS 1102 B
San Diego, CA 92123 1636
(619) 980 7122

Development Service Department, Environmental Services Department (ESD)
9601 Ridgehaven Court, Ste. 320, MS 1103 B
San Diego, CA 92123 1636
(858) 627-3303

PFS-6 Prior to the issuance of any grading or building permit, the applicant shall receive approval, in writing, from the ADD of Entitlements Division, environmental designee (MMC) that the waste management plan has been prepared, approved, and implemented. Also prior to the issuance of any grading or building permit, the applicant shall submit written evidence to the ADD that the final Demolition/Construction report has been approved by MMC and ESD. This report shall summarize the results of implementing the

above Waste Management Plan elements, including: the actual waste generated and diverted from the project, the waste reduction percentage achieved, and how that goal was achieved, etc.

A. Pre Construction Meeting

1. Demolition Permit - Prior to issuance of any demolition permit, the permittee shall be responsible to obtain written verification from MMC indicating that the permittee has arranged a preconstruction meeting to coordinate the implementation of the MMRP. The Precon Meeting shall include: the Construction Manager, Demolition/Building/Grading Contractor; MMC; and ESD and the Building Inspector and/or the Resident Engineer (RE) (whichever is applicable) to verify that implementation of the waste management plan shall be performed in compliance with the plan approved by Entitlements Division and the San Diego Environmental Services Department (ESD), to ensure that impacts to solid waste facilities are mitigated to below a level of significance.
2. At the Precon Meeting, the Permittee shall submit three (3) reduced copies (11x17 inches) of the approved waste management plan, which two (2) copies are to be distributed to MMC and one (1) ESD.
3. Prior to the start of demolition, the Permittee and/or the Construction Manager shall submit a construction/demolition schedule to MMC and ESD.
 - a. Grading and Building Permit - Prior to issuance of any grading or building permit, the Permittee shall be responsible to arrange a preconstruction meeting to coordinate the implementation of the MMRP. The Precon Meeting shall include: the Construction Manager, Building/Grading Contractor, MMC, ESD, and the Building Inspector and/or the Resident Engineer (RE) (whichever is applicable) to verify that implementation of the waste management plan shall be performed in compliance with the plan approved by Entitlement Division and the ESD, to ensure that impacts to solid waste facilities are mitigated to below a level of significance.
4. The Permittee and/or Construction Manager shall call for inspections by the RE/BI and both MMC and ESD, who will periodically visit the demolition/construction site to verify implementation of the waste management plan. The Consultant

Site Visit Record (CSVSR) shall be used to document the Daily Waste Management Activity/progress.

5. Within 30 days after the completion of the implementation of the MMRP, for any demolition or construction permit, a final results report shall be submitted to both MMC and ESD for review and approval to the satisfaction of the City. MMC will coordinate the approval with ESD and issue the approval notification.
6. Prior to final clearance of any demolition permit, issuance of any grading or building permit, release of the grading bond and/or issuance of any Certificate of Occupancy, the permittee shall provide documentation to the ADD of the Entitlements Division that the waste management plan has been effectively implemented.

10.6 NOISE

The following measures shall be implemented to reduce exterior noise levels for multifamily residences during construction, to the satisfaction of the City Development Services Department. The City Development Services Department shall verify that future development plans incorporate or comply with the following measures:

- NOI-1** All construction equipment shall be equipped with mufflers and other suitable noise attenuation devices. This would reduce construction noise levels by at least 5 dB(A).
- NOI-2** Grading and construction contractors shall use quieter equipment as opposed to noisier equipment (such as rubber-tired equipment rather than track equipment).
- NOI-3** Equipment staging areas shall be located on the southeastern portion of the project site, as far away as possible from single-family residences and the Willard B. Hage Elementary School.
- NOI-4** During building construction, the construction contractor shall implement sound attenuation blankets with a Sound Transmission Class rating of ten or more along the northern portion of the project site. The sound attenuation blankets shall break the line-of-sight between construction activities and the single-family residences adjacent to the project site. The sound attenuation blankets shall remain in place as long as construction activity is located within 175 feet of the single-family residences. This would reduce construction noise levels by 10 dB(A) at single-family residences located north of the project site.
- NOI-5** During building construction, a five-foot temporary noise barrier (e.g., solid wood) shall be constructed by the construction contractor along the western

portion of the project site such that line-of-sight between construction activities and the Willard B. Hage Elementary School is blocked. The five-foot noise barrier shall remain in place as long as construction activity is located within 175 feet of the elementary school. This would reduce construction noise levels by 5 dB(A) at the Willard B. Hage Elementary School.

- NOI-6** The construction contractor shall establish a noise disturbance coordinator. The disturbance coordinator shall be responsible for responding to any local complaints about construction noise. The disturbance coordinator shall determine the cause of the noise complaint (e.g., starting too early in the day, bad muffler, etc.) and shall be required to implement measures such that the complaint is resolved to the satisfaction of the City Engineering Department. Signs posted at the construction site shall list the telephone number for the disturbance coordinator.
- NOI-7** During building construction, a five-foot temporary noise barrier (e.g. solid wood) shall be constructed such that the line-of-sight is blocked between construction activity and new dwelling units. The five-foot noise barrier that blocks the line-of-sight from construction activity to new dwelling units constructed on the project site shall remain in place until buildings are constructed during phases 2 and 3.
- NOI-8** Lease agreements for residents occupying Phase 1 and Phase 2 dwelling units shall include notification of on-going phases 2 and 3 construction activity.
- NOI-9** An eight-foot permanent noise barrier (e.g., earth berm, solid wall, or some combination therefore) shall be constructed between the northeastern recreation area and I-15.

With implementation of NOI-1 through NOI-6, construction noise levels at the single-family residences north of the project site, the Willard B. Hage Elementary School, and single-family residences northwest of the project would be reduced to below the 75 dB(A) construction noise threshold. Therefore, construction noise would result in a less-than-significant impact to off-site receptors after implementation of mitigation.

Mitigation measures NOI-1 and NOI-7 would each reduce construction noise levels at Phase 1 dwelling units by 5 dB(A), reducing the noise levels at Building 1 to 79 dB(A). This would exceed the 75 dB(A) significance threshold and, as such, construction noise would result in a short-term significant and unavoidable impact to new on-site residences.

Mitigation measure NOI-9 would reduce exterior noise levels at the northeastern recreational area by approximately 7 dB(A). This would result in maximum exterior noise levels of approximately 59.6 dB(A); which is below the 60 dB(A) significance threshold. Therefore, impacts from the northeastern recreational area would be reduced to less than significant levels.

10.7 PALEONTOLOGY

The following measures shall be implemented to reduce potential impacts to paleontological resources, to the satisfaction of the City Development Services Department. The City Development Services Department shall verify that future development plans have incorporated or complied with the following measures:

PALEO-1 The following shall be implemented:

I. Prior to Permit Issuance

A. Entitlement Division Plan Check

1. Prior to Notice to Proceed (NTP) for any construction permits, including but not limited to, the first Grading Permit, Demolition Plans/Permits and Building Plans/Permits, but prior to the first preconstruction meeting, whichever is applicable, the Assistant Deputy Director (ADD) Environmental designee shall verify that the requirements for Paleontological Monitoring have been noted on the appropriate construction documents.

B. Letters of Qualification have been submitted to ADD

1. The applicant shall submit a letter of verification to Mitigation Monitoring Coordination (MMC) identifying the Principal Investigator (PI) for the project and the names of all persons involved in the paleontological monitoring program, as defined in the City of San Diego Paleontology Guidelines.
2. MMC will provide a letter to the applicant confirming the qualifications of the PI and all persons involved in the paleontological monitoring of the project.
3. Prior to the start of work, the applicant shall obtain approval from MMC for any personnel changes associated with the monitoring program.

II. Prior to Start of Construction

A. Verification of Records Search

1. The PI shall provide verification to MMC that a site specific records search has been completed. Verification includes, but is not limited to a copy of a confirmation letter from San Diego Natural History Museum, other institution or, if the search was in-house, a letter of verification from the PI stating that the search was completed.

2. The letter shall introduce any pertinent information concerning expectations and probabilities of discovery during trenching and/or grading activities.

B. PI Shall Attend Precon Meetings

1. Prior to beginning any work that requires monitoring, the Applicant shall arrange a Precon Meeting that shall include the PI, Construction Manager (CM) and/or Grading Contractor, Resident Engineer (RE), Building Inspector (BI), if appropriate, and MMC. The qualified paleontologist shall attend any grading/excavation related Precon Meetings to make comments and/or suggestions concerning the Paleontological Monitoring program with the Construction Manager and/or Grading Contractor.
 - a. If the PI is unable to attend the Precon Meeting, the Applicant shall schedule a focused Precon Meeting with MMC, the PI, RE, CM or BI, if appropriate, prior to the start of any work that requires monitoring.

2. Identify Areas to be Monitored

Prior to the start of any work that requires monitoring, the PI shall submit a Paleontological Monitoring Exhibit (PME) based on the appropriate construction documents (reduced to 11x17) to MMC identifying the areas to be monitored including the delineation of grading/excavation limits. The PME shall be based on the results of a site specific records search as well as information regarding existing known soil conditions (native or formation).

3. When Monitoring Will Occur

- a. Prior to the start of any work, the PI shall also submit a construction schedule to MMC through the RE indicating when and where monitoring will occur.
- b. The PI may submit a detailed letter to MMC prior to the start of work or during construction requesting a modification to the monitoring program. This request shall be based on relevant information such as review of final construction documents which indicate conditions such as depth of excavation and/or site graded to bedrock, presence or absence of fossil resources, etc., which may reduce or increase the potential for resources to be present.

III. During Construction

A. Monitor Shall be Present During Grading/Excavation/Trenching

1. The monitor shall be present full-time during grading/excavation/trenching activities as identified on the PME that could result in impacts to formations with high and moderate resource sensitivity. The Construction Manager is responsible for notifying the RE, PI, and MMC of changes to any construction activities.
2. The monitor shall document field activity via the Consultant Site Visit Record (CSVSR). The CSVSR's shall be faxed by the CM to the RE the first day of monitoring, the last day of monitoring, monthly (Notification of Monitoring Completion), and in the case of ANY discoveries. The RE shall forward copies to MMC.
3. The PI may submit a detailed letter to MMC during construction requesting a modification to the monitoring program when a field condition such as trenching activities that do not encounter formational soils as previously assumed, and/or when unique/unusual fossils are encountered, which may reduce or increase the potential for resources to be present.

B. Discovery Notification Process

1. In the event of a discovery, the Paleontological Monitor shall direct the contractor to temporarily divert trenching activities in the area of discovery and immediately notify the RE or BI, as appropriate.
2. The Monitor shall immediately notify the PI (unless Monitor is the PI) of the discovery.
3. The PI shall immediately notify MMC by phone of the discovery, and shall also submit written documentation to MMC within 24 hours by fax or email with photos of the resource in context, if possible.

C. Determination of Significance

1. The PI shall evaluate the significance of the resource.
 - a. The PI shall immediately notify MMC by phone to discuss significance determination and shall also submit a letter to MMC indicating whether additional mitigation is

required. The determination of significance for fossil discoveries shall be at the discretion of the PI.

- b. If the resource is significant, the PI shall submit a Paleontological Recovery Program (PRP) and obtain written approval from MMC. Impacts to significant resources must be mitigated before ground disturbing activities in the area of discovery will be allowed to resume.
- c. If resource is not significant (e.g., small pieces of broken common shell fragments or other scattered common fossils) the PI shall notify the RE, or BI as appropriate, that a non-significant discovery has been made. The Paleontologist shall continue to monitor the area without notification to MMC unless a significant resource is encountered.
- d. The PI shall submit a letter to MMC indicating that fossil resources will be collected, curated, and documented in the Final Monitoring Report. The letter shall also indicate that no further work is required.

IV. Night and/or Weekend Work

A. If night and/or weekend work is included in the contract

- 1. When night and/or weekend work is included in the contract package, the extent and timing shall be presented and discussed at the precon meeting.
- 2. The following procedures shall be followed.
 - a. No Discoveries

In the event that no discoveries were encountered during night and/or weekend work, The PI shall record the information on the CSV and submit to MMC via fax by 8AM on the next business day.
 - b. Discoveries

All discoveries shall be processed and documented using the existing procedures detailed in Sections III - During Construction.
 - c. Potentially Significant Discoveries

If the PI determines that a potentially significant discovery has been made, the procedures detailed under Section III - During Construction shall be followed.

- d. The PI shall immediately contact MMC, or by 8AM on the next business day to report and discuss the findings as indicated in Section III-B, unless other specific arrangements have been made.

B. If night work becomes necessary during the course of construction

- 1. The Construction Manager shall notify the RE, or BI, as appropriate, a minimum of 24 hours before the work is to begin.
- 2. The RE, or BI, as appropriate, shall notify MMC immediately.

C. All other procedures described above shall apply, as appropriate.

V. Post Construction

A. Preparation and Submittal of Draft Monitoring Report

- 1. The PI shall submit two copies of the Draft Monitoring Report (even if negative), prepared in accordance with the Paleontological Guidelines which describes the results, analysis, and conclusions of all phases of the Paleontological Monitoring Program (with appropriate graphics) to MMC for review and approval within 90 days following the completion of monitoring.
 - a. For significant paleontological resources encountered during monitoring, the Paleontological Recovery Program shall be included in the Draft Monitoring Report.
 - b. Recording Sites with the San Diego Natural History Museum

The PI shall be responsible for recording (on the appropriate forms) any significant or potentially significant fossil resources encountered during the Paleontological Monitoring Program in accordance with the City's Paleontological Guidelines, and submittal of such forms to the San Diego Natural History Museum with the Final Monitoring Report.
- 2. MMC shall return the Draft Monitoring Report to the PI for revision or, for preparation of the Final Report.
- 3. The PI shall submit revised Draft Monitoring Report to MMC for approval.

4. MMC shall provide written verification to the PI of the approved report.
 5. MMC shall notify the RE or BI, as appropriate, of receipt of all Draft Monitoring Report submittals and approvals.
- B. Handling of Fossil Remains
1. The PI shall be responsible for ensuring that all fossil remains collected are cleaned and catalogued.
 2. The PI shall be responsible for ensuring that all fossil remains are analyzed to identify function and chronology as they relate to the geologic history of the area; that faunal material is identified as to species; and that specialty studies are completed, as appropriate.
- C. Curation of fossil remains: Deed of Gift and Acceptance Verification
1. The PI shall be responsible for ensuring that all fossil remains associated with the monitoring for this project are permanently curated with an appropriate institution.
 2. The PI shall include the Acceptance Verification from the curation institution in the Final Monitoring Report submitted to the RE or BI and MMC.
- D. Final Monitoring Report(s)
1. The PI shall submit two copies of the Final Monitoring Report to MMC (even if negative), within 90 days after notification from MMC that the draft report has been approved.
 2. The RE shall, in no case, issue the Notice of Completion until receiving a copy of the approved Final Monitoring Report from MMC, which includes the Acceptance Verification from the curation institution.

10.8 BIOLOGICAL RESOURCES

The following measures shall be implemented to reduce potential impacts to biological resources to the satisfaction of the City Development Services Department. The City Development Services Department shall verify that future development plans have incorporated or complied with the following measures:

- BIO-1** To avoid direct impacts to the California horned lark, which nests on the ground and could nest on site, nesting bird surveys shall be conducted within 72 hours of any vegetation clearing if development occurs between March 15 and August 15. If occupied nests are present within 500 feet of the

construction area, impacts to vegetation shall be avoided until the juvenile birds have fledged.

In addition, implementation of mitigation measures LU-1, LU-2 and LU-3 (see *Section 4.1, Land Use*) would reduce off-site short-term indirect significant impacts to special status wildlife species and sensitive vegetation communities to below a level of significance.

Implementation of mitigation measures BIO-1, BIO-2, and BIO-3 would reduce the potential significant impact on nesting birds to below a level of significance:

- BIO-2** If the site has a potential to support nests and nesting raptors are present during grading and/or construction activities, compliance with the Migratory Bird Treaty Act/Section 3503 would preclude the potential for direct impacts.
- BIO-3** If there is a potential for indirect noise impacts to nesting raptors, prior to any grading within the development area during the raptor breeding season (January 15 through August 15) the biologist shall ensure that no raptors are nesting. If construction occurs during the raptor breeding season a preconstruction survey shall be conducted and no construction shall be allowed within 300 to 500 feet of any identified nest(s) until the young fledge. Should the biologist determine that raptors are nesting, an active nest shall not be removed until after the breeding season.

The following mitigation measure would reduce potential off-site impacts to nesting birds along the Black Mountain Road off-site traffic improvement area to less than significant:

- BIO-4** To avoid indirect impacts to raptors nesting in adjacent trees east of the work area, a nesting raptor survey shall be conducted by a qualified biologist within 72 hours prior to the start of grading if construction occurs between January 15 and August 15. If occupied nests are present within 500 feet of the construction area, construction must be avoided to the 500-foot buffer area around the nest until the juvenile birds have fledged.

000147

RESOLUTION NUMBER R-_____

DATE OF FINAL PASSAGE _____

APPROVING VESTING TENTATIVE MAP NO. 481936 AND
EASEMENT VACATION NO. 368513 FOR THE CASA MIRA
VIEW PROJECT.

WHEREAS, Scripps Mesa Developers, LLC, a California Limited Liability Company, Applicant/Subdivider, and John D. Leppert, Engineer, submitted an application to the City of San Diego for a vesting tentative map (Vesting Tentative Map [VTM] No. 481936) and easement vacation (Easement Vacation No. 368513), for the subdivision of land to develop a condominium project with 1,848 condominium units for the Casa Mira View Project [Project], located on the east side of Westview Parkway, north of Mira Mesa Boulevard, and legally described as Parcels 1 through 6, inclusive, of Parcel Map No. 16194, filed August 21, 1990, in the Office of the County Recorder, in the Mira Mesa Community Plan area, in the RM-3-7 zone which is proposed to be rezoned to the RM-3-8 zone; and

WHEREAS, the Map proposes the subdivision of a 41.31-acre site into six lots for condominium development; and

WHEREAS, the project complies with the requirements of a preliminary soils and/or geological reconnaissance report pursuant to the Subdivision Map Act and Section 144.0220 of the Municipal Code of the City of San Diego; and

WHEREAS, the subdivision is a condominium project as defined in Section 1350 et seq. of the Civil Code of the State of California and filed pursuant to the Subdivision Map Act. The total number of condominium dwelling units is 1,848; and

WHEREAS, on October 2, 2008, the Planning Commission of the City of San Diego considered VTM No. 481936 and Easement Vacation No. 368513, and pursuant to Resolution No. 4449-PC voted to recommend City Council approval of the vesting tentative map; and

WHEREAS, under Charter Section 280(a)(2), this Resolution is not subject to veto by the Mayor because this matter requires the City Council to act as a quasi-judicial body, a public hearing was required by law implicating due process rights of individuals affected by the decision, and the Council was required by law to consider evidence at the hearing and to make legal findings based on the evidence presented; and

WHEREAS, the matter was set for public hearing on _____, testimony having been heard, evidence having been submitted, and the City Council having fully *considered the matter and being fully advised concerning the same*; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that it adopts the following findings with respect to VTM No. 481936 and Easement Vacation No. 368513:

1. The proposed subdivision and its design or improvement are consistent with the policies, goals, and objectives of the applicable land use plan (Land Development Code [LDC] section 125.0440(a) and Subdivision Map Act Sections 66473.5, 66474(a), and 66474(b)).
2. The proposed subdivision complies with the applicable zoning and development regulations of the LDC section 125.0440(b)).
3. The site is physically suitable for the type and density of development (LDC section 125.0440(c) and Subdivision Map Act Sections 6474(c) and 66474(d).
4. The design of the subdivision or the proposed improvements are not likely to cause substantial environmental damage or substantially and avoidable injure fish or wildlife or their habitat (LDC section 125.0440(d) and Subdivision Map Act Section 66474(e)).
5. The design of the subdivision or the type of improvements will not be detrimental to the public health, safety, and welfare (LDC section 125.0440(e) and Subdivision Map Act Section 66474(f)).

6. The design of the subdivision or the type of improvements will not conflict with easements acquired by the public at large for access through or use of property within the proposed subdivision (LDC section 125.0440(f) and Subdivision Map Act Section 66474(g)).

7. The design of the proposed subdivision provides, to the extent feasible, for future passive or natural heating and cooling opportunities (LDC section 125.0440(g) and Subdivision Map Act Section 66473.1)).

8. The decision maker has considered the effects of the proposed subdivision on the housing needs of the region and that those needs are balanced against the needs for public services and the available fiscal and environmental resources (LDC section 125.0440(h) and Subdivision Map Act Section 66412.3)).

9. The property contains an easement which must be vacated to implement the Final Map in accordance with San Diego Municipal Code section 125.0430.

The above findings are supported by the minutes, maps, and exhibits, all of which are herein incorporated by reference.

BE IT FURTHER RESOLVED, that pursuant to California Government Code section 66434(g), portions of Public Sewer and Storm Drain Easement per Document Recorded on August 26, 1977 as Instrument No. 77-351287, or O.R., portions of Drainage, Water Access and Sewer Facilities Easement dedicated per Map No. 7988, portions of Antenna Easement per Document recorded on November 23, 1971, as Instrument No. 71-273372, of O.R., portions of Sewer and Water Easement per Document recorded on November 23, 1977, as Instrument No. 77-486328, O.R., portions of Public Utilities Easement per Document recorded on September 21, 1992, as Instrument No. 1992-0597862, of O.R., portions of Water and Sewer Easement dedicated per Map No. 7988, located within the project boundaries as shown in Vesting Tentative Map No. 481936, shall be vacated, contingent upon the recordation of the approved final map for the project and that said Findings are supported by the minutes, maps, and exhibits, all of which are herein incorporated by reference:

1. There is no present or prospective public use for the easement, either for the facility or purpose for which it was originally acquired or for any other public use of a like nature that can be anticipated.
2. The public will benefit from the action through improved utilization of the land made available by the abandonment.
3. The abandonment is consistent with the Mira Mesa Community Plan.
4. The public facility or purpose for which the easement was originally acquired will not be detrimentally affected by the abandonment or the purpose for which the easement was acquired no longer exists.

BE IT FURTHER RESOLVED, that VTM No. 481936 and Easement Vacation No. 368513 is granted to Scripps Mesa Developers, LLC, a California Limited Liability Company, Applicant/Subdivider and John D. Leppert, Engineer, subject to the attached conditions which are made a part of this resolution by this reference.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

//Submitted without signature//

By

Shirley R. Edwards
Chief Deputy City Attorney

SRE:cw:pev
10/09/08
11/07/08 COR.COPY
12/24/08 COR.COPY2
Or.Dept:DSD
R-2009-447
MMS: #6880

CONDITIONS FOR TENTATIVE MAP NO. 368513

CASA MIRA VIEW PROJECT

ADOPTED BY RESOLUTION NO. R-_____ ON _____

GENERAL

1. This Vesting Tentative Map [VTM] will expire on _____.
2. Compliance with all of the following conditions shall be assured, to the satisfaction of the City Engineer, prior to the recordation of the Final Map, unless otherwise noted.
3. Prior to the VTM expiration date, a Final Map to consolidate the existing lots into six lots shall be recorded in the Office of the County Recorder.
4. The Final Map shall conform to the provisions of Planned Development Permit [PDP] No. 294375/Site Development Permit [SDP] No. 294373.
5. Subdivider shall defend, indemnify, and hold the City (including its agents, officers, and employees [together, "Indemnified Parties"]) harmless from any claim, action, or proceeding against any Indemnified Party to attack, set aside, void, or annul City's approval of this project, which action is brought within the time period provided for in Government Code section 66499.37. City shall promptly notify Subdivider of any claim, action, or proceeding, and shall cooperate fully in the defense. If City fails to promptly notify Subdivider of any claim, action, or proceeding, or if City fails to cooperate fully in the defense, Subdivider shall not thereafter be responsible to defend, indemnify, or hold City harmless. City may participate in the defense of any claim, action, or proceeding if City both bears its own attorney's fees and costs, and defends the action in good faith. Subdivider shall not be required to pay or perform any settlement unless the settlement is approved by the Subdivider.

AFFORDABLE HOUSING

6. Prior to the recordation of the Final Map, the Subdivider shall enter into an affordable housing agreement with the Housing Commission to provide affordable housing units in compliance with the Affordable Housing Requirements of the City's Inclusionary Housing Ordinance (Chapter 14, Article 2, Division 13 of the Land Development Code [LDC]).

ENGINEERING

7. Pursuant to City Council Policy 600-20, the Subdivider shall provide evidence to ensure that an affirmative marketing program is established.
8. The Subdivider shall enter into a Maintenance Agreement for the ongoing permanent Best Management Practice [BMP's] maintenance.
9. Prior to the issuance of any construction permit, the Subdivider shall incorporate any construction BMP's necessary to comply with Chapter 14, Article 2, Division 1 (Grading Regulations) of the San Diego Municipal Code [SDMC], into the construction plans or specifications.
10. Prior to the issuance of any construction permit the Subdivider shall incorporate and show the type and location of all post-construction BMP's on the final construction drawings, in accordance with the approved Water Quality Technical Report.
11. The Final Map shall comply with the provisions of PDP No. 294375/SDP No. 294373.
12. The drainage system proposed for this subdivision, as shown on the approved VTM is subject to approval by the City Engineer, including the realigned storm drain and its appurtenances for maintenance.
13. Prior to the issuance of grading permits, a geotechnical investigation report shall be required that specifically addresses the proposed grading plans and cites the City's account number and Drawing number. The geotechnical investigation shall provide specific geotechnical grading recommendations and include geotechnical maps, using the grading plan as a base, that depict recommended location of subdrains, location of outlet headwalls, anticipated removal depth, anticipated over-excavation depth, and limits of remedial grading.
14. The Subdivider shall obtain a grading permit for the grading proposed for this project. All grading shall conform to requirements in accordance with the City of San Diego Municipal Code in a manner satisfactory to the City Engineer.
15. Compliance with all conditions shall be assured, to the satisfaction of the City Engineer, prior to the recordation of the Final Map.
16. Development of this project shall comply with all requirements of State Water Resources Control Board [SWRCB] Order No. 99-08 DWQ and the Municipal Storm Water Permit, Order No. 2001-01 (NPDES General Permit No. CAS000002 and CAS0108758), Waste Discharge Requirements for Discharges of Storm Water Runoff Associated With Construction Activity. In accordance with said permit, a Storm Water Pollution Prevention Plan [SWPPP] and a Monitoring

Program Plan shall be implemented concurrently with the commencement of grading activities, and a Notice of Intent [NOI] shall be filed with the SWRCB.

17. A copy of the acknowledgment from the SWRCB that an NOI has been received for this project shall be filed with the City of San Diego when received; further, a copy of the completed NOI from the SWRCB showing the permit number for this project shall be filed with the City of San Diego when received. In addition, the owner(s) and subsequent owner(s) of any portion of the property covered by this grading permit and by SWRCB Order No. 99-08 DWQ, and any subsequent amendments thereto, shall comply with special provisions as set forth in SWRCB Order No. 99-08 DWQ.
18. All driveways and curb openings shall comply with City Standard Drawings G-14A, G-16 and SDG-100.
19. The Subdivider shall underground any new service run to any new or proposed structures within the subdivision.
20. The Subdivider shall ensure that all existing onsite utilities serving the subdivision shall be undergrounded with the appropriate permits. The Subdivider shall provide written confirmation from applicable utilities that the conversion has taken place, or provide other means to assure the undergrounding, satisfactory to the City Engineer.
21. Conformance with the "General Conditions for Tentative Subdivision Maps," filed in the Office of the City Clerk under Document No. 767688 on May 7, 1980, is required. Only those exceptions to the General Conditions which are shown on the tentative map and covered in these special conditions will be authorized.

All public improvements and incidental facilities shall be designed in accordance with criteria established in the Street Design Manual, filed with the City Clerk as Document No. RR-297376.

MAPPING

22. "Basis of Bearings" means the source of uniform orientation of all measured bearings shown on the map. Unless otherwise approved, this source will be the California Coordinate System, Zone 6, North American Datum of 1983 [NAD 83].
23. "California Coordinate System means the coordinate system as defined in Section 8801 through 8819 of the California Public Resources Code. The specified zone for San Diego County is "Zone 6," and the official datum is the "North American Datum of 1983."

24. The Final Map shall:
- a. Use the California Coordinate System for its "Basis of Bearing" and express all measured and calculated bearing values in terms of said system. The angle of grid divergence from a true median (theta or mapping angle) and the north point of said map shall appear on each sheet thereof. Establishment of said Basis of Bearings may be by use of existing Horizontal Control stations or astronomic observations.
 - b. Show two measured ties from the boundary of the map to existing Horizontal Control stations having California Coordinate values of Third Order accuracy or better. These tie lines to the existing control shall be shown in relation to the California Coordinate System (i.e., grid bearings and grid distances). All other distances shown on the map are to be shown as ground distances. A combined factor for conversion of grid-to-ground distances shall be shown on the map.

WASTEWATER AND WATER

25. The Subdivider shall install all sewer facilities required by the accepted sewer study, necessary to serve this development. Sewer facilities as shown on the approved Tentative Map will require modification based on the accepted sewer study.
26. The Subdivider shall abandon the existing onsite public sewer main in the south portion of this lot or it will be converted to private, satisfactory to the Director of Public Utilities. All associated public sewer easements shall be vacated, satisfactory to the Metropolitan Wastewater Department Director.
27. The Subdivider shall provide evidence, satisfactory to the Director of Public Utilities, indicating that each condominium will have its own sewer lateral or provide CC&R's for the operation and maintenance of private sewer facilities that serve more than one ownership.
28. No trees or shrubs exceeding three feet in height at maturity shall be installed within ten feet of any public sewer facilities.
29. The Subdivider shall design and construct any proposed public sewer facilities to the most current edition of the City of San Diego's Sewer Design Guide.
30. All onsite sewer facilities shall be private.
31. The Subdivider shall grant adequate water easements, including vehicular access to each appurtenance; including meters, blow offs, valves, fire hydrants, et cetera, for all public water facilities that are not located within fully improved public rights of way, satisfactory to the Director of Public Utilities.

32. Prior to recording the final map, the Subdivider shall properly abandon the portions of existing 12-inch diameter water main per City drawing number 16126-D which traverses the site in a manner satisfactory to the Director of Public Utilities.
33. The Subdivider shall install fire hydrants at locations satisfactory to the Fire Department and the City Engineer. If more than two fire hydrants or thirty dwelling units are located on a dead end main then the Subdivider shall install a redundant water system satisfactory to the Director of Public Utilities.
34. The Subdivider shall design and construct all irrigation systems to utilize reclaimed water in a manner satisfactory to the Director of Public Utilities.
35. The Subdivider shall provide CC&R's for the operation and maintenance of on site private water facilities that serve or traverse more than one lot or unit.
36. The Subdivider agrees to design and construct all proposed public water facilities, including services, meters, and easements in accordance with established criteria in the most current edition of the City San Diego Water Facility Design Guidelines and regulations, standards, and practices pertaining thereto. *Proposed facilities that do not meet the current standards for construction, operation, maintenance and access, shall be private.*
37. Prior to the approval of any public improvement drawings, the Subdivider shall provide acceptable potable and reclaimed water studies satisfactory to the Director of Public Utilities. The studies shall plan the pressure zone(s) and water facilities necessary to serve this development, including potable redundancy, consistent with previously accepted studies in this area. If phasing of the development is proposed, then a phasing plan shall be included in the studies.

INFORMATION:

- The approval of this VTM by the Council of the City of San Diego does not authorize the Subdivider to violate any Federal, State, or City laws, ordinances, regulations, or policies including but not limited to, the Federal Endangered Species Act of 1973 and any amendments thereto (16 USC Section 1531 et seq.).
- If the Subdivider makes any request for new water and sewer facilities, including services, fire hydrants, and laterals, then the Subdivider shall design and construct such facilities in accordance with established criteria in the most current editions of the City of San Diego water and sewer design guides and City regulations, standards and practices pertaining thereto. Off-site improvements may be required to provide adequate and acceptable levels of service and will be determined at final engineering.

- Subsequent applications related to this VTM will be subject to fees and charges based on the rate and calculation method in effect at the time of payment.
- Any party on whom fees, dedications, reservations, or other exactions have been imposed as conditions of approval of the VTM, may protest the imposition within ninety days of the approval of this Tentative Map by filing a written protest with the City Clerk pursuant to California Government Code Section 66020.
- Where in the course of development of private property, public facilities are damaged or removed the property owner shall at no cost to the City obtain the required permits for work in the public right-of-way, and repair or replace the public facility to the satisfaction of the City Engineer SDMC section 142.0607.

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RESOLUTION NUMBER R-_____

DATE OF FINAL PASSAGE _____

RESOLUTION GRANTING PLANNED DEVELOPMENT
PERMIT NO. 294375/SITE DEVELOPMENT PERMIT
NO. 294373 FOR THE CASA MIRA VIEW PROJECT.

WHEREAS, Scripps Mesa Developers, LLC, a Limited Liability Company, Owner/Permittee, filed an application with the City of San Diego for a planned development permit/site development permit to subdivide and develop a condominium project with 1,848 condominium units, known as the Casa Mira View project, located on six parcels along the east side of Westview Parkway between Dauntless Street and Mira Mesa Boulevard in the Mira Mesa community, and legally described as Parcels 1 through 6, inclusive, of Parcel Map No. 16194, filed August 21, 1990, in the Office of the County Recorder, in the Mira Mesa Community Plan area, in the RM-3-7 zone which is proposed to be rezoned to the RM-3-8 zone; and

WHEREAS, on October 2, 2008, the Planning Commission of the City of San Diego considered Planned Development Permit [PDP] No. 294375/Site Development Permit [SDP] No. 294373, and pursuant to Resolution No. 4449-PC voted to recommend City Council approval of the Permit; and

WHEREAS, under Charter Section 280(a)(2), this Resolution is not subject to veto by the Mayor because this matter requires the City Council to act as a quasi-judicial body, a public hearing was required by law implicating due process rights of individuals affected by the

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decision, and the Council was required by law to consider evidence at the hearing and to make legal findings based on the evidence presented; and

WHEREAS, the matter was set for public hearing on _____, testimony having been heard, evidence having been submitted, and the City Council having fully considered the matter and being fully advised concerning the same; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that it adopts the following findings with respect to PDP No. 294375/SDP No. 294373:

A. PLANNED DEVELOPMENT PERMIT – SAN DIEGO MUNICIPAL CODE [SDMC] SECTION 126.0604

1. The proposed development will not adversely affect the applicable land use plan. The proposed multi-family development on the 41.31-acre site is designated for Residential use by the Mira Mesa Community Plan and allows residential development at the densities allowed by the existing RM-3-8 zone. The proposed project site is located within the Mira Mesa Community Plan area and designated for Medium-high density residential development at 30-45 dwelling units per net acre. The project as proposed conforms to the density in the community plan. With the approval of the rezone, the project would be also consistent with the approved development agreement. The project will help satisfy a variety of goals of the applicable land use plans. The project will increase the supply of housing in the community within walking distance of transit, shopping, and employment opportunities. Development of the property would not conflict with goals of the community plan relative to topography as the project site has been previously graded. Being determined the project is consistent with the Progress Guide and General Plan, the Mira Mesa Community Plan, the regulations of the RM-3-8 zone and the Planned Development Permit regulations, the proposed development will not adversely affect the applicable land use plan.

2. The proposed development will not be detrimental to the public health, safety, and welfare. The proposed development is included in a Development Agreement, Doc. No. 00-17178, filed November 14, 1988, and as such has or will provide significant public benefits which would not have occurred otherwise. The proposed development will construct necessary sewer and water facilities to serve the residents of the development; will enter into a Maintenance Agreement for the ongoing permanent Best Management Practices [BMP's] maintenance; will comply with all requirements of State Water Resources Control Board [SWRCB] Order No. 99-08 DWQ and the Municipal Storm Water Permit, Order No. 2001-01 (NPDES General Permit No. CAS000002 and CAS0108758), Waste Discharge Requirements for

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Discharges of Storm Water Runoff Associated With Construction Activity. The development will also provide for the health, safety, and welfare of the residents by constructing all buildings in accordance with current construction standards and codes. All structures constructed will be reviewed by professional staff for compliance with all relevant and applicable building, electrical, mechanical and fire codes to assure the structures will meet or exceed the current regulations. As such the proposed development will not be detrimental to the public health, safety, and welfare.

3. The proposed development will comply with the regulations of the Land Development Code. The proposed development complies with the regulations of the RM-3-8 zone and site-specific development regulations for the property. No deviations or variances are required to approve the proposed project. The proposed development complies with all relevant regulations of the Land Development Code. Specific conditions of approval require the continued compliance with all relevant regulations of the City of San Diego effective for this site and have been written as such into PDP No. 294375/SDP No. 294373. Development of the property will meet all requirements of these regulations. Concept plans for the project identify all other development criteria in effect for the site. All relevant regulations shall be complied with at all times for the life of the project. In these ways the proposed development will comply with the applicable and relevant regulations of the Land Development Code.

4. The proposed development, when considered as a whole, will be beneficial to the community. The project will provide several significant features, amenities and improvements in the community. The project will add 1,848 housing units to the housing stock of the City of San Diego at a time in the history of the city when there is a housing shortage and in a community with a very low vacancy rate. The city currently has a very limited supply of land designated and zoned for medium to high density multi-family housing. Increasing the housing supply will be particularly beneficial in the Mira Mesa area because of the large and expanding employment base in the area. This site has long been identified in the Community Plan as the location where density should be located. This proposal will help to alleviate the shortage of multi-family housing opportunities. This project will also provide for affordable housing opportunities on-site. Housing near the many employment sites in Mira Mesa will aid in reducing automobile congestion, particularly during peak travel hours. The project will also create public areas within the property to promote pedestrian activity. Pedestrian walkways have been provided around the entire perimeter of the project which creates opportunities for the public display of art. Finally, the developer will be providing much needed FBA funding for the completion of identified public improvements. Furthermore, of the 1,848 units fully 10 percent or 185 dwelling units will be affordable to persons earning no more than 65 percent of the County average median income. Thus the development of the project will materially benefit the city by providing both housing units during a shortage of supply and by providing affordable housing to persons of special need. The resulting benefits of the project will be positive for the community and City of San Diego.

5. Any proposed deviations pursuant to Section 126.0602(b)(1) are appropriate for this location and will result in a more desirable project than would be achieved if designed in strict conformance with the development regulations of the applicable zone.

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The project includes several deviations, all of which provide a more desirable project. The deviations are as follows:

a. A deviation to increase the maximum allowed height of the structures. The maximum height proposed with this project is isolated at several locations along the buildings at 64 feet 7 inches above finish grade where 50 feet is otherwise allowed. Due to the existing grading of the site to control storm water on-site during the years of vacancy, when the buildings are measured from the pre-existing ground, the maximum height would be as much as 80 feet or 30 feet above the maximum allowed in the RM-3-8 zone. While the height of the flat roofed buildings is much closer to the 50 foot requirement, this increased height in limited areas on the site at specific locations of the building will permit greater flexibility for the design of the roofline, allow for more articulation of the parapets and turrets above the roofline, and an opportunity to increase the amount of open space being provided on the ground by the project. Allowing the deviation to the maximum height also results in an increase of the overall setbacks of the proposed buildings to the adjacent property lines. While the entire project meets the required setback requirements, the increase in allowable building height enables the project to greatly exceed the setback requirements. This further permits greater opportunities for landscaping within the project and along the adjacent streets of Westview Parkway and Interstate 15. When the density for the project site was designated in the community plan and in the existing Development Agreement, Doc. No. 00-17178, filed November 14, 1988, approximately twenty years ago, there was no height limit for the comparable zone. Height limits within the previous zone were not introduced into the Land Development Code until 2000 when the Land Development Code was last updated. If the buildings were reduced in height by even one entire floor, a project design consisting of the same number of dwelling units and unit floor area or square footage, would occupy an additional 201,110 square feet of site area on the ground or 4.62 acres of land. This would result in a needless reduction in usable open space and building setbacks and is not deemed to be as beneficial to the City and Mira Mesa community as allowing the proposed height deviation.

b. A deviation to develop less than the required 33 percent of the allowable floor area ratio [FAR] for structured parking. The efficiency of the architectural plan approved for the project results in structured parking that occupies less than the required minimum 33 percent of the allowable FAR. In addition, the structured parking will not be visible from any public vantage point. The residential buildings will surround the parking structures. Approving the project with a lower allocation of floor area ratio devoted to the required parking structures will result in greater amount of usable open space available to residents and visitors to the project. The project will provide a maximum of 27 percent of the available FAR for structured parking.

c. A deviation to allow an 8 foot high noise wall within the southerly side yard setback where a maximum height of 6 feet is otherwise permitted. This setback area is very wide and is measured at 59 feet in width. The noise wall is necessary to protect recreational uses that will be constructed and occur in this location within this setback area.

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d. A deviation to allow the construction of carports for all the parking stalls located on the top deck of each parking structure rather than providing trees in raised containers to meet the tree distribution requirements for parking lots required in the City-wide Landscape Regulations. The purpose of providing trees within parking lots is to create shading of the pavement to reduce the heat island effect of large expanses of pavement. Carports will provide a superior quantity of shading on the parking structure deck when compared to living trees. Trees installed in containers on the top deck of the parking structure will never attain a height and breadth capable of providing an equivalent amount of shade as will be permanently provided by the carports.

As a result of the approved deviations and other design features of the project, the proposed project conforms to the overall policies, regulations and purpose and intent of the Planned Development regulations. The design will result in a more desirable project for the City and the community than would be realized through the strict application of the development regulations at this location.

B. SITE DEVELOPMENT PERMIT – SDMC SECTION 126.0504

1. Findings for all Site Development Permits:

a. **The proposed development will not adversely affect the applicable land use plan.** The proposed multi-family development on the 41.31-acre site is designated for Residential use by the Mira Mesa Community Plan and allows residential development at the densities allowed by the existing RM-3-8 zone. Being determined the project is consistent with the Progress Guide and General Plan, the Mira Mesa Community Plan, the regulations of the RM-3-8 zone and the Planned Development Permit regulations, the proposed development will not adversely affect the applicable land use plan. Refer to Planned Development Permit Finding No. 1 above for additional detail.

b. **The proposed development will not be detrimental to the public health, safety, and welfare.** The proposed development is included in a Development Agreement, Doc. No. 00-17178, filed November 14, 1988, and as such has or will provide significant public benefits which would not have occurred otherwise. All structures constructed will be reviewed by professional staff for compliance with all relevant and applicable building, electrical, mechanical and fire codes to assure the structures will meet or exceed the current regulations. As such the proposed development will not be detrimental to the public health, safety, and welfare. Refer to Planned Development Permit Finding No. 2 above for additional detail.

c. **The proposed development will comply with the applicable regulations of the Land Development Code.** The proposed development complies with the regulations of the RM-3-8 zone and site-specific development regulations for the property. No deviations or variances are required to approve the proposed project. The proposed development complies with all relevant regulations of the Land Development Code. Refer to Planned Development Permit Finding No. 3 above for additional detail.

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2. Supplemental Findings--Deviations for Affordable/In-Fill Housing Projects and Sustainable Buildings

a. **The proposed development will materially assist in accomplishing the goal of providing affordable housing opportunities in economically balanced communities throughout the City, and/or the proposed development will materially assist in reducing impacts associated with fossil fuel energy use by utilizing alternative energy resources, self-generation and other renewable technologies (e.g. photovoltaic, wind, and/or fuel cells) to generate electricity needed by the building and its occupants.** One hundred eighty-five dwelling units of affordable family housing will be developed as a result of the approval and subsequent construction of the project. One thousand six hundred sixty-three for-sale market rate condominiums will be developed. There will be no discernable distinction between the affordable and market rate units. These project features and goals will provide needed housing and development in an area of the city replete with redevelopment opportunity. The provision of 185 dwelling units affordable to persons at the income range described as 65 percent of the County average median income will contribute in a real and meaningful way towards the goals of providing affordable housing in the City.

b. **The development will not be inconsistent with the purpose or the underlying zone.** The development of 1,848 dwelling units on the proposed site will be consistent with the regulations of the RM-3-8 zone and all other regulations and policies of the City of San Diego which zone the site for residential use. The purpose of the RM-3-8 zone is to allow for the provision and development of multiple unit housing in accordance with specific development regulations of the zone in areas designated by the zoning and community plan for multiple family dwelling units. Development of the site with the project will comply with all relevant regulations of the RM-3-8 zone.

c. **Any proposed deviations are appropriate for this location and will result in a more desirable project than would be achieved if designed in strict conformance with the development regulations of the applicable zone.** The proposed development complies with the Mira Mesa Community Plan which designates the site for multiple dwelling unit development. The proposed deviations are necessary to maximize the use of the land and to provide the highest quality affordable housing development. The deviations are required due to existing infrastructure adjacent to the site and to the limitations of the zoning regulations. The proposed project includes architectural plans with extensive articulation and fenestration. This level of detail is consistent with the purpose and intent of the planned development regulations; however, in order to implement the site plan and architecture at this site; and to maximize the density and intensity of development at the site to contribute to the housing stock of the City of San Diego, the proposed deviations are granted. All other requirements comply with the regulations which apply to the project site in accordance with the Land Development Code.

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The above findings are supported by the minutes, maps and exhibits, all of which are herein incorporated by reference.

BE IT FURTHER RESOLVED, that PDP No. 294375/SDP No. 294373 is granted to Scripps Mesa Developers, LLC, a Limited Liability Company, Owner/Permittee, under the terms and conditions set forth in the attached permit which is made a part of this resolution.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

//Submitted without signature//

By

Shirley R. Edwards
Chief Deputy City Attorney

SRE:cw:pev

10/09/08

Or.Dept:DSD

R-2009-446

MMS: #6880

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RECORDING REQUESTED BY
CITY OF SAN DIEGO
DEVELOPMENT SERVICES DEPARTMENT
PERMIT INTAKE, MAIL STATION 501

WHEN RECORDED MAIL TO
CITY CLERK
MAIL STATION 2A

SPACE ABOVE THIS LINE FOR RECORDER'S USE

JOB ORDER NUMBER 425739

PLANNED DEVELOPMENT PERMIT NO. 294375/
SITE DEVELOPMENT PERMIT NO. 294373
CASA MIRA VIEW PROJECT NO. 91647 [MMRP]

CITY COUNCIL

This Planned Development Permit No. 294375/Site Development Permit No. 294373 is granted by the Council of the City of San Diego to Scripps Mesa, LLC, a California Limited Liability Company, Owner/Permittee, pursuant to San Diego Municipal Code [SDMC] section 126.0600 and 126.0500. The 41.31-acre site is located on the east side of Westview Parkway between Dauntless Street and Mira Mesa Boulevard in the RM-3-7 zone which is proposed to be rezoned to the RM-3-8 zone in the Mira Mesa community plan area. The project site is legally described as Parcels 1 through 6, inclusive, of Parcel Map No. 16194, filed August 21, 1990, in the Office of the County Recorder.

Subject to the terms and conditions set forth in this Permit, permission is granted to Owner/Permittee for the subdivision of land to develop a condominium project with 1,848 condominium units, described and identified by size, dimension, quantity, type, and location on the approved exhibits [Exhibit "A"] dated _____, on file in the Development Services Department.

The project shall include:

- a. The subdivision of land and development of a condominium project with 1,848 condominium units of which 1,663 dwelling units shall be market rate for sale and 185 dwelling units shall be for sale affordable housing units affordable to persons who earn no more than 65 percent of the area median income;
- b. Four deviations are approved with the project and are described as follows: 1) Maximum building height would be 64 feet 7 inches above

the proposed finish grade where 50 feet is otherwise allowed;
 2) Develop less than 33 percent of the minimum required Floor Area Ratio [FAR] for the structured parking. The structured parking FAR would be 27.9 percent; 3) An eight foot noise wall within the southerly side yard setback, where a maximum height of six feet is allowed;
 4) Allow construction of carports for all parking spaces located on the top deck of each parking structure in lieu of complying with the tree distribution requirements for parking lots.

- c. Landscaping (planting, irrigation and landscape related improvements);
- d. Off-street parking; and
- e. Accessory improvements determined by the City Manager to be consistent with the land use and development standards in effect for this site per the adopted community plan, California Environmental Quality Act Guidelines, public and private improvement requirements of the City Engineer, the underlying zone(s), conditions of this Permit, and any other applicable regulations of the SDMC in effect for this site.

STANDARD REQUIREMENTS:

1. This permit must be utilized within thirty-six months after the date on which all rights of appeal have expired. Failure to utilize and maintain utilization of this permit as described in the SDMC will automatically void the permit unless an Extension of Time has been granted. Any such Extension of Time must meet all SDMC requirements and applicable guidelines in affect at the time the extension is considered by the appropriate decision maker.
2. No permit for the construction, occupancy or operation of any facility or improvement described herein shall be granted, nor shall any activity authorized by this Permit be conducted on the premises until:
 - a. The Owner/Permittee signs and returns the Permit to the Development Services Department; and
 - b. The Permit is recorded in the Office of the San Diego County Recorder.
3. Unless this Permit has been revoked by the City of San Diego the property included by reference within this Permit shall be used only for the purposes and under the terms and conditions set forth in this Permit unless otherwise authorized by the City Manager.
4. This Permit is a covenant running with the subject property and shall be binding upon the Owner/Permittee and any successor or successors, and the interests of any successor shall be subject to each and every condition set out in this Permit and all referenced documents.

5. The continued use of this Permit shall be subject to the regulations of this and any other applicable governmental agency.

6. Issuance of this Permit by the City of San Diego does not authorize the Owner/Permittee for this permit to violate any Federal, State or City laws, ordinances, regulations or policies including, but not limited to, the Endangered Species Act of 1973 [ESA] and any amendments thereto (16 U.S.C. § 1531 et seq.).

7. The Owner/Permittee shall secure all necessary building permits. The Owner/Permittee is informed that to secure these permits, substantial modifications to the building and site improvements to comply with applicable building, fire, mechanical and plumbing codes and State law requiring access for disabled people may be required.

8. Construction plans shall be in substantial conformity to Exhibit "A." No changes, modifications or alterations shall be made unless appropriate application(s) or amendment(s) to this Permit have been granted.

9. All of the conditions contained in this Permit have been considered and have been determined to be necessary in order to make the findings required for this Permit. It is the intent of the City that the holder of this Permit be required to comply with each and every condition in order to be afforded the special rights which the holder of the Permit is entitled as a result of obtaining this Permit.

In the event that any condition of this Permit, on a legal challenge by the Owner/Permittee of this Permit, is found or held by a court of competent jurisdiction to be invalid, unenforceable, or unreasonable, this Permit shall be void. However, in such an event, the Owner/Permittee shall have the right, by paying applicable processing fees, to bring a request for a new permit without the "invalid" condition(s) back to the discretionary body which approved the Permit for a determination by that body as to whether all of the findings necessary for the issuance of the proposed permit can still be made in the absence of the "invalid" condition(s). Such hearing shall be a hearing de novo and the discretionary body shall have the absolute right to approve, disapprove, or modify the proposed permit and the condition(s) contained therein.

10. The Owner/Permittee shall defend, indemnify, and hold harmless the City, its agents, officers, and employees from any and all claims, actions, proceedings, damages, judgments, or costs, including attorney's fees, against the City or its agents, officers, or employees, including, but not limited to, any to any action to attack, set aside, void, challenge, or annul this development approval and any environmental document or decision. The City will promptly notify Owner/Permittee of any claim, action, or proceeding and, if the City should fail to cooperate fully in the defense, the Owner/Permittee shall not thereafter be responsible to defend, indemnify, and hold harmless the City or its agents, officers, and employees. The City may elect to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification. In the event of such election, Owner/Permittee shall pay all of the costs related thereto, including without limitation reasonable attorney's fees and costs. In the event of a disagreement between the City and

Owner/Permittee regarding litigation issues, the City shall have the authority to control the litigation and make litigation related decisions, including, but not limited to, settlement or other disposition of the matter. However, the Owner/Permittee shall not be required to pay or perform any settlement unless such settlement is approved by Owner/Permittee.

11. This Permit may be developed in phases. Each phase shall be constructed prior to sale or lease to individual owners or tenants to ensure that all development is consistent with the conditions and exhibits approved for each respective phase per the approved Exhibit "A."

ENVIRONMENTAL/MITIGATION REQUIREMENTS:

12. Mitigation requirements are tied to the environmental document, specifically the Mitigation, Monitoring, and Reporting Program [MMRP]. These MMRP conditions are incorporated into the permit by reference or authorization for the project.

13. The mitigation measures specified in the MMRP, and outlined in Environmental Impact Report No. 91647, shall be noted on the construction plans and specifications under the heading ENVIRONMENTAL/MITIGATION REQUIREMENTS.

14. The Owner/Permittee shall comply with the MMRP as specified in Environmental Impact Report No. 91647, satisfactory to the City Manager and the City Engineer. Prior to issuance of the first grading permit, all conditions of the MMRP shall be complied with, to the satisfaction of the City Engineer. All mitigation measures as specifically outlined in the MMRP shall be implemented for the following issue areas:

- Land Use/Multiple Species Conservation Program
- Traffic/Circulation
- Air Quality
- Public Facilities and Services
- Noise
- Paleontological Resources
- Biological Resources

15. Prior to issuance of any construction permit, the Owner/Permittee shall pay the Long Term Monitoring Fee in accordance with the Development Services Fee Schedule to cover the City's costs associated with implementation of permit compliance monitoring.

16. The Permit shall comply with the conditions of the Vesting Tentative Map No. 481936.

LANDSCAPE REQUIREMENTS:

17. Prior to issuance of any construction permits for grading, the Owner/Permittee shall submit landscape construction documents for the revegetation and hydro-seeding of all disturbed land in accordance with the Land Development Manual Landscape

Standards and to the satisfaction of the City Manager. All plans shall be in substantial conformance to this permit and Exhibit "A."

18. Prior to issuance of any construction permits for buildings, the Owner/Permittee shall submit complete landscape and irrigation construction documents consistent with the Land Development Manual, Landscape Standards to the Development Services Department for approval. The construction documents shall be in substantial conformance with Exhibit "A."

19. Prior to issuance of any Certificate of Occupancy, it shall be the responsibility of the Owner/Permittee to install all required landscape and obtain all required landscape inspections. A "No Fee" Street Tree Permit shall be obtained for the installation, establishment, and on-going maintenance of all street trees.

20. The Owner/Permittee shall maintain all landscape shall be maintained in a disease, weed, and litter free condition at all times. Severe pruning or "topping" of trees is not permitted. The trees shall be maintained in a safe manner to allow each tree to grow to its mature height and spread.

21. The Owner/Permittee shall be responsible for the maintenance of all landscape improvements in the right-of-way consistent with the Land Development Manual, Landscape Standards unless long-term maintenance of said landscaping will be the responsibility of a Landscape Maintenance District or other approved entity. In this case, a Landscape Maintenance Agreement shall be submitted for review by a Landscape Planner.

22. If any required landscape, including but not limited to existing or new plantings, hardscape, landscape features, indicated on the approved construction document plans is damaged or removed during demolition, or construction, the Owner/Permittee is responsible to repair and/or replace any landscape in kind and equivalent size per the approved documents to the satisfaction of the City Manager within thirty days of damage or prior to a Certificate of Occupancy.

PLANNING/DESIGN REQUIREMENTS:

23. No fewer than 3,387 off-street parking spaces shall be maintained on the property at all times in the approximate locations shown on the approved Exhibit "A." Parking spaces shall comply at all times with the SDMC and shall not be converted for any other use unless otherwise authorized by the City Manager.

24. A topographical survey conforming to the provisions of the SDMC may be required if it is determined, during construction, that there may be a conflict between the building(s) under construction and a condition of this Permit or a regulation of the underlying zone. The cost of any such survey shall be borne by the Owner/Permittee.

25. All signs associated with this development shall be consistent with sign criteria established by the City-wide sign regulations.

26. The Owner/Permittee shall post a copy of this Permit and Tentative Map in the sales office for consideration by each prospective buyer.
27. All private outdoor lighting shall be shaded and adjusted to fall on the same premises where such lights are located and in accordance with the applicable regulations in the SDMC.
28. Prior to the issuance of building permits, the Owner/Permittee shall vary the architectural theme and color palette consistent with the approved Exhibit "A," satisfactory to the Development Services Director. Actual color selections may vary at the time of paint application in the field.

TRANSPORTATION REQUIREMENTS

29. Prior to the issuance of a building permit for the first residential dwelling unit, the Owner/Permittee shall assure, to the satisfaction of the City Engineer, construction of a northbound right-turn lane at the intersection of Mira Mesa Boulevard and Black Mountain Road.
30. Prior to the issuance of a building permit for the first residential dwelling unit, the Owner/Permittee shall assure, to the satisfaction of the City Engineer, widening of eastbound and westbound approaches and assure an additional westbound right-turn lane at the intersection of Black Mountain Road and Gold Coast Drive.
31. Prior to the issuance of a building permit for the first residential dwelling unit, the Owner/Permittee shall assure, to the satisfaction of the City Engineer, construction of a northbound right-turn lane at the intersection of Black Mountain Road and Hillery Drive.
32. Prior to the issuance of a building permit for the first residential dwelling unit, the Owner/Permittee shall provide a fair-share contribution of \$75,268 toward improvements at the intersection of Black Mountain Road and Carroll Canyon Road, to the satisfaction of the City Engineer.
33. Prior to the issuance of a building permit for the first residential dwelling unit, the Owner/Permittee shall either provide a fair-share contribution of \$1,572,000 towards the construction of the I-15 'managed lanes south segment' project or provide a fair-share contribution distributed by building and totaling \$1,572,000 (in 2008 dollars) in the following manner: Prior to the issuance of a building permit for the first residential building permit, the Owner/Permittee shall provide a fair-share contribution of \$700,000 (in 2008 dollars). Prior to the issuance of a building permit for the second building (811th residential unit), the Owner/Permittee shall provide a fair-share contribution of \$700,000 (in 2008 dollars). Prior to the issuance of a building permit for the third building (1621st residential unit), the Owner/Permittee shall provide a fair-share contribution of \$172,000 (in 2008 dollars) towards the construction of the I-15 'managed lanes south segment' project. This contribution is to be paid subject to the satisfaction of the City Engineer.
34. Prior to the issuance of a building permit for the second building (811th residential dwelling unit), the Owner/Permittee shall assure, to the satisfaction of the City

Engineer, construction of a third northbound and a third southbound thru lanes and transitions on Black Mountain Road from Mercy Road transitioning to four lanes prior to the Penasquitos Canyon Creek Bridge.

35. Prior to the issuance of a building permit for the first residential dwelling unit, the Owner/Permittee shall assure, to the satisfaction of the City Engineer, an extension of the westbound dual-left turn lanes on Mira Mesa Boulevard as well as provide striping, signing, and modifications to increase the storage for the southbound left turn lanes on Westview Parkway in order to increase the capacity of this intersection and increase the capacity of street segments on Mira Mesa Boulevard.

36. Prior to the issuance of a building permit for the second building (811th residential unit), the Owner/Permittee shall provide a private shuttle service as part of the Transportation Demand Management Plan connecting the project to existing shopping opportunities at Mira Mesa Marketplace Center and transit connections on Mira Mesa Boulevard and Black Mountain Road subject to the satisfaction of the City Engineer. This shuttle shall have two stops on the project site and shall be limited to residents and guests of the development. The shuttle shall carry no fewer than 16 passengers and shall conform to the requirements of the American with Disabilities Act (ADA accessible). The shuttle shall maintain 15 minute headways in weekday peak hours. Days, hours of operation, and routing are to be satisfactory to the City Engineer.

37. Prior to the issuance of a building permit for first residential dwelling unit, the Owner/Permittee shall assure, to the satisfaction of the City Engineer, construction of a traffic signal at the intersection of Westview Parkway and the project's main access, relocation of the park driveway to be located at the signalized location, re-striping of Westview Parkway to accommodate the signal, and a signal interconnect between the existing signals on Westview parkway at Galvin/Westview parkway at Capricorn and the new signalized project access on Westview parkway.

38. Prior to the issuance of a building permit for the third building (1621st dwelling unit) the Owner/Permittee shall provide, to the satisfaction of the City Engineer, an improvement for a connection to the existing public road and signal at Galvin Avenue and Westview Parkway to provide a second signalized access to the project.

WASTEWATER REQUIREMENTS: [ADD if applicable]

39. All onsite sewer facilities will be private.

40. Prior to the issuance of any building permits, the Owner/Permittee shall assure, by permit and bond, the design and construction of all public sewer facilities necessary to serve this development.

41. Prior to the issuance of any occupancy permit, the Owner/Permittee shall abandon the existing onsite public sewer main in the south portion of this lot or it will be converted to private, satisfactory to the Director of Public Utilities. All associated public sewer easements shall be vacated, satisfactory to the Metropolitan Wastewater Department Director.

42. Prior to the issuance of any engineering or building permits, the Owner/Permittee shall provide evidence, satisfactory to the Metropolitan Wastewater Department Director, indicating that each condominium will have its own sewer lateral or provide Covenants, Conditions, and Restrictions [CC&R's] for the operation and maintenance of private sewer facilities that serve more than one ownership.

43. The Owner/Permittee shall design and construct any proposed public sewer facilities to the most current edition of the City of San Diego's Sewer Design Guide.

44. Proposed private underground sewer facilities located within a single lot shall be designed to meet the requirements of the California Uniform Plumbing Code and shall be reviewed as part of the building permit plan check.

45. No trees or shrubs exceeding three feet in height at maturity shall be installed within ten feet of any public sewer facilities.

WATER REQUIREMENTS:

46. Prior to the approval of any public improvement drawings, the Owner/Permittee shall provide acceptable potable and reclaimed water studies satisfactory to the Public Utilities Director. The studies shall plan the pressure zone(s) and water facilities necessary to serve this development, including potable redundancy, consistent with previously accepted studies in this area. If phasing of the development is proposed, then a phasing plan shall be included in the studies.

47. Prior to the issuance of any building permits, the Owner/Permittee shall assure, by permit and bond, the design and construction of new water service(s) and the removal of all existing unused services within the proposed driveway easement access, in a manner satisfactory to the Public Utilities Director and the City Engineer.

48. Prior to the issuance of any building permits, the Owner/Permittee shall apply for a plumbing permit for the installation of appropriate private back flow prevention device(s) on each water service (domestic, fire, and irrigation), in a manner satisfactory to the Public Utilities Director, the City Engineer, and the Cross Connection Supervisor in the Customer Support Division of the Water Department.

49. Prior to the issuance of any building permits, the Owner/Permittee shall grant additional widened easement to include the proposed alignment of the driveway entrance, fire lane and portions of the northwest driveway which contain the existing water main and all associated water appurtenances including but not limited to the water and fire services, on-site fire hydrants, et cetera, in a manner satisfactory to the Public Utilities Director and the City Engineer.

50. Prior to the issuance of any certificates of occupancy, the Owner/Permittee shall install fire hydrants at locations satisfactory to the Fire Department and the City Engineer.

51. Prior to the issuance of any certificates of occupancy, public water facilities necessary to serve the development, including services, shall be complete and operational in a manner satisfactory to the Public Utilities Director and the City Engineer.

52. Prior to issuance of any building or construction permits, the Owner/Permittee shall assure, by permit and bond, the design and construction of recycled water services to provide connection to the recycled water system to be used for all irrigation and construction needs of the project as approved by the Public Utilities Director and the City Engineer. If recycled water is not yet available, then the irrigation systems shall be designed in such a manner as to accept recycled water when available and avoid any potential cross connections.

53. Prior to issuance of any building permits, the Owner/Permittee shall assure, by permit and bond, to provide connection to the recycled water system to be used for all irrigation needs of the project.

54. Prior to issuance of any building permits, the Owner/Permittee shall provide the CC&R's that will be used by the Casa Mira View Homeowners Association for the operation and maintenance of all the private water recycling lines and appurtenances that serve the site. The CC&R's must also include LEED certified water conservation measures or equivalent and WaterSense or Energy Star appliances.

55. The Owner/Permittee shall design and construct all proposed buildings in compliance with the State of California 2007 California Green Building Standards Code, CCR, Title 24, Part 11 or comparable for water conservation measures which achieves a 20 percent improvement in water use efficiency for residential and commercial plumbing fixtures over the building code in effect as of the date of preparation of the Water Supply Assessment.

56. The Owner/Permittee agrees to design and construct all proposed buildings to include LEED certified or equivalent water conservation measures and Water Sense or Energy Star Appliances as approved by the Public Utilities Director and the City Engineer. These measures shall reduce the overall water demand by a minimum of 7.5 percent.

INFORMATION ONLY:

- Any party on whom fees, dedications, reservations, or other exactions have been imposed as conditions of approval of this development permit, may protest the imposition within ninety days of the approval of this development permit by filing a written protest with the City Clerk pursuant to California Government Code § 66020.
- This development may be subject to impact fees at the time of construction permit issuance

APPROVED by the Council of the City of San Diego on _____, by
Resolution Number R-_____.

000174

AUTHENTICATED BY THE CITY MANAGER

By _____

The undersigned Permittee, by execution hereof, agrees to each and every condition of this Permit and promises to perform each and every obligation of Permittee hereunder.

SCRIPPS MESA, LLC
Owner/Permittee

By _____

By _____

**NOTE: Notary acknowledgments
must be attached per Civil Code
section 1180 et seq.**

RECORDING REQUESTED BY
CITY OF SAN DIEGO
DEVELOPMENT SERVICES
PERMIT INTAKE, MAIL STATION 501

WHEN RECORDED MAIL TO
CITY CLERK
MAIL STATION 2A

SPACE ABOVE THIS LINE FOR RECORDER'S USE

JOB ORDER NUMBER: 425739

PLANNED DEVELOPMENT PERMIT NO. 294375 and
SITE DEVELOPMENT PERMIT NO. 294373
CASA MIRA VIEW - PROJECT NO. 91647 [MMRP]
CITY COUNCIL

This Planned Development Permit No. 294375 and Site Development Permit No. 294373 is granted by the Council of the City of San Diego to Scripps Mesa Owner/Permittees, LLC, a California limited liability company, Owner/Permittee, pursuant to San Diego Municipal Code [SDMC] section 126.0600 and 126.0500. The 41.31 acre site is located on the east side of Westview Parkway between Dauntless Street and Mira Mesa Boulevard in the RM-3-7 Zone which is proposed to be rezoned to the RM-3-8 Zone in the Mira Mesa community plan area. The project site is legally described as Parcels 1 through 6, inclusive, of Parcel Map No. 16194, filed August 21, 1990, in the Office of the County Recorder.

Subject to the terms and conditions set forth in this Permit, permission is granted to Owner/Permittee for the subdivision of land to develop a condominium project with 1,848 condominium units, described and identified by size, dimension, quantity, type, and location on the approved exhibits [Exhibit "A"] dated [INSERT Approval Date], on file in the Development Services Department.

The project shall include:

- a. The subdivision of land and development of a condominium project with 1,848 condominium units of which 185 dwelling units shall be affordable housing units in compliance with the Inclusionary Housing Ordinance; forty of these affordable housing units may be located off-site at the Legacy Apartments project, consistent with an agreement with the Housing Commission;
- b. Four deviations are approved with the project and are described as follows: 1) Maximum building height would be 64 feet 7 inches above the proposed finish grade where 50 feet is otherwise allowed; 2) Develop less than 33% of the minimum required Floor Area Ratio (FAR) for the structured parking. The structured parking FAR would

- be 27.9%; 3) An eight foot noise wall within the southerly side yard setback, where a maximum height of six feet is allowed; 4) Allow construction of carports for all parking spaces located on the top deck of each parking structure in lieu of complying with the tree distribution requirements for parking lots.
- c. Landscaping (planting, irrigation and landscape related improvements);
- d. Off-street parking;
- e. Accessory improvements determined by the Development Services Department to be consistent with the land use and development standards in effect for this site per the adopted community plan, California Environmental Quality Act Guidelines, public and private improvement requirements of the City Engineer, the underlying zone(s), conditions of this Permit, and any other applicable regulations of the SDMC in effect for this site.

STANDARD REQUIREMENTS:

1. This permit must be utilized within thirty-six (36) months after the date on which all rights of appeal have expired. Failure to utilize and maintain utilization of this permit as described in the SDMC will automatically void the permit unless an *Extension of Time* has been granted. Any such Extension of Time must meet all SDMC requirements and applicable guidelines in effect at the time the extension is considered by the appropriate decision maker.
2. No permit for the construction, occupancy or operation of any facility or improvement described herein shall be granted, nor shall any activity authorized by this Permit be conducted on the premises until:
 - a. The Owner/Permittee signs and returns the Permit to the Development Services Department; and
 - b. The Permit is recorded in the Office of the San Diego County Recorder.
3. Unless this Permit has been revoked by the City of San Diego the property included by reference within this Permit shall be used only for the purposes and under the terms and conditions set forth in this Permit unless otherwise authorized by the Development Services Department.
4. This Permit is a covenant running with the subject property and shall be binding upon the Owner/Permittee and any successor or successors, and the interests of any successor shall be subject to each and every condition set out in this Permit and all referenced documents.
5. The continued use of this Permit shall be subject to the regulations of this and any other applicable governmental agency.

6. Issuance of this Permit by the City of San Diego does not authorize the Owner/Permittee for this permit to violate any Federal, State or City laws, ordinances, regulations or policies including, but not limited to, the Endangered Species Act of 1973 [ESA] and any amendments thereto (16 U.S.C. § 1531 et seq.).
7. The Owner/Permittee shall secure all necessary building permits. The Owner/Permittee is informed that to secure these permits, substantial modifications to the building and site improvements to comply with applicable building, fire, mechanical and plumbing codes and State law requiring access for disabled people may be required.
8. Construction plans shall be in substantial conformity to Exhibit "A." No changes, modifications or alterations shall be made unless appropriate application(s) or amendment(s) to this Permit have been granted.
9. All of the conditions contained in this Permit have been considered and have been determined to be necessary in order to make the findings required for this Permit. It is the intent of the City that the holder of this Permit be required to comply with each and every condition in order to be afforded the special rights which the holder of the Permit is entitled as a result of obtaining this Permit.

In the event that any condition of this Permit, on a legal challenge by the Owner/Permittee of this Permit, is found or held by a court of competent jurisdiction to be invalid, unenforceable, or unreasonable, this Permit shall be void. However, in such an event, the Owner/Permittee shall have the right, by paying applicable processing fees, to bring a request for a new permit without the "invalid" condition(s) back to the discretionary body which approved the Permit for a determination by that body as to whether all of the findings necessary for the issuance of the proposed permit can still be made in the absence of the "invalid" condition(s). Such hearing shall be a hearing de novo and the discretionary body shall have the absolute right to approve, disapprove, or modify the proposed permit and the condition(s) contained therein.

10. The Owner/Permittee shall defend, indemnify, and hold harmless the City, its agents, officers, and employees from any and all claims, actions, proceedings, damages, judgments, or costs, including attorney's fees, against the City or its agents, officers, or employees, including, but not limited to, any to any action to attack, set aside, void, challenge, or annul this development approval and any environmental document or decision. The City will promptly notify Owner/Permittee of any claim, action, or proceeding and, if the City should fail to cooperate fully in the defense, the Owner/Permittee shall not thereafter be responsible to defend, indemnify, and hold harmless the City or its agents, officers, and employees. The City may elect to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification. In the event of such election, Owner/Permittee shall pay all of the costs related thereto, including without limitation reasonable attorney's fees and costs. In the event of a disagreement between the City and Owner/Permittee regarding litigation issues, the City shall have the authority to control the litigation and make litigation related decisions, including, but not limited to, settlement or other disposition of the matter. However, the Owner/Permittee shall not be required to pay or perform any settlement unless such settlement is approved by Owner/Permittee.

11. This Permit may be developed in phases. Each phase shall be constructed prior to sale or lease to individual owners or tenants to ensure that all development is consistent with the conditions and exhibits approved for each respective phase per the approved exhibit "A."

ENVIRONMENTAL/MITIGATION REQUIREMENTS:

12. Mitigation requirements are tied to the environmental document, specifically the Mitigation, Monitoring, and Reporting Program (MMRP). These MMRP conditions are incorporated into the permit by reference or authorization for the project

13. The mitigation measures specified in the Mitigation Monitoring and Reporting Program, and outlined in Environmental Impact Report No. 91647, shall be noted on the construction plans and specifications under the heading ENVIRONMENTAL/MITIGATION REQUIREMENTS.

14. The Owner/Permittee shall comply with the Mitigation, Monitoring, and Reporting Program (MMRP) as specified in Environmental Impact Report No. 91647, satisfactory to the Development Services Department and the City Engineer. Prior to issuance of the first grading permit, all conditions of the MMRP shall be complied with, to the satisfaction of the City Engineer. All mitigation measures as specifically outlined in the MMRP shall be implemented for the following issue areas:

- Land Use/Multiple Species Conservation Program
- Traffic/Circulation
- Air Quality
- Public Facilities and Services
- Noise
- Paleontological Resources
- Biological Resources

15. Prior to issuance of any construction permit, the Owner/Permittee shall pay the Long Term Monitoring Fee in accordance with the Development Services Fee Schedule to cover the City's costs associated with implementation of permit compliance monitoring.

ENGINEERING REQUIREMENTS:

16. The Permit shall comply with the conditions of the Vesting Tentative Map No. 481936.

LANDSCAPE REQUIREMENTS:

17. Prior to issuance of any construction permits for grading, the Owner/Permittee shall submit landscape construction documents for the revegetation and hydro-seeding of all disturbed land in accordance with the Land Development Manual Landscape Standards and to the satisfaction of the Development Services Department. All plans shall be in substantial conformance to this permit and Exhibit "A."

18. Prior to issuance of any construction permits for buildings, the Owner/Permittee shall submit complete landscape and irrigation construction documents consistent with the Land Development Manual, Landscape Standards to the Development Services Department for approval. The construction documents shall be in substantial conformance with Exhibit "A."

19. Prior to issuance of any Certificate of Occupancy, it shall be the responsibility of the Owner/Permittee to install all required landscape and obtain all required landscape inspections. A "No Fee" Street Tree Permit shall be obtained for the installation, establishment, and on-going maintenance of all street trees.

20. The Owner/Permittee shall maintain all landscape in a disease, weed and litter free condition at all times. Severe pruning or "topping" of trees is not permitted. The trees shall be maintained in a safe manner to allow each tree to grow to its mature height and spread.

21. The Owner/Permittee shall be responsible for the maintenance of all landscape improvements in the right-of-way consistent with the Land Development Manual, Landscape Standards unless long-term maintenance of said landscaping will be the responsibility of a Landscape Maintenance District or other approved entity. In this case, a Landscape Maintenance Agreement shall be submitted for review by a Landscape Planner.

22. If any required landscape, including but not limited to existing or new plantings, hardscape, landscape features, indicated on the approved construction document plans is damaged or removed during demolition or construction, the Owner/Permittee is responsible to repair and/or replace any landscape in kind and equivalent size per the approved documents to the satisfaction of the Development Services Department within 30 days of damage or prior to a Certificate of Occupancy.

PLANNING/DESIGN REQUIREMENTS:

23. No fewer than 3,387 off-street parking spaces shall be maintained on the property at all times in the approximate locations shown on the approved Exhibit "A." Parking spaces shall comply at all times with the SDMC and shall not be converted for any other use unless otherwise authorized by the Development Services Department.

24. A topographical survey conforming to the provisions of the SDMC may be required if it is determined, during construction, that there may be a conflict between the building(s) under construction and a condition of this Permit or a regulation of the underlying zone. The cost of any such survey shall be borne by the Owner/Permittee.

25. All signs associated with this development shall be consistent with sign criteria established by the City-wide sign regulations.

26. The Owner/Permittee shall post a copy of this permit and Tentative Map in the sales office for consideration by each prospective buyer.

27. All private outdoor lighting shall be shaded and adjusted to fall on the same premises where such lights are located and in accordance with the applicable regulations in the SDMC.
28. Prior to the issuance of building permits, the Owner/Permittee shall vary the architectural theme and color palette consistent with the approved Exhibit "A," satisfactory to the Development Services Director. Actual color selections may vary at the time of paint application in the field.

TRANSPORTATION REQUIREMENTS

29. Prior to the issuance of a building permit for the first residential dwelling unit, the Owner/Permittee shall assure, to the satisfaction of the City Engineer, construction of a northbound right-turn lane at the intersection of Mira Mesa Boulevard and Black Mountain Road.
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- This development may be subject to impact fees at the time of construction permit issuance

APPROVED by the Council of the City of San Diego on [date and resolution number].

000184

Permit Type/PTS Approval No.: PDPermit No. 294375
and SDP No. 294373

Date of Approval:

AUTHENTICATED BY THE DEVELOPMENT SERVICES DEPARTMENT

Kelly Broughton
Director
Development Services

**NOTE: Notary acknowledgment
must be attached per Civil Code
section 1180 et seq.**

**The undersigned Owner/Permittee, by execution hereof, agrees to each and every condition of
this Permit and promises to perform each and every obligation of Owner/Permittee hereunder.**

Scripps Mesa Owner/Permittees, LLC
Owner/Permittee

By _____
NAME
TITLE

Scripps Mesa Owner/Permittees, LLC
Owner/Permittee

By _____
NAME
TITLE

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